(5)

Supreme Court, U.S.
FILED
JAN 28 2000
CLERK

No. 99-5525

IN THE

Supreme Court of the United States

CHARLES THOMAS DICKERSON,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

JOINT APPENDIX
Volume I

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January 28, 2000

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PETITION FOR CERTIORARI FILED JULY 30, 1999
CERTIORARI GRANTED DECEMBER 6, 1999

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
(ALEXANDRIA)

Criminal Docket No. 97-CR-159-ALL

UNITED STATES OF AMERICA,
Plaintiff,

v.

CHARLES THOMAS DICKERSON,
Defendant.

DOCKET ENTRIES

DATE	NO.	PROCEEDINGS
1/28/97	1	COMPLAINT as to Charles Thomas Dickerson [1:97-m-83] (rtra) [Entry date 01/28/97]
1/28/97	2	AFFIDAVIT by USA as to Charles Thomas Dickerson Re:[1-1] complaint [1:97-m-83] (rtra) [Entry date 01/28/97]
1/28/97	—	CJA 23 FINANCIAL AFFIDAVIT by Charles Thomas Dickerson [1:97-m-83] (rtra) [Entry date 01/28/97]
1/28/97	—	CJA 20 as to Charles Thomas Dickerson: Appointment of Attorney Joseph John McCarthy Voucher # 0749883 (Approved by Magistrate Judge W. Curtis Sewell) [1:97-m-83] (rtra) [Entry date 01/28/97]
1/28/97	—	Initial appearance as to Charles Thomas Dickerson held; Preliminary Examination/Detention Hearing set for 10:00 1/30/97 for Charles Thomas Dickerson before Magistrate

DATE	NO.	PROCEEDINGS
		Judge W. C. Sewell (Tape 30.) USA appeared through: K. Kahoe. Dft(s) appeared through: w/o counsel. (Defendant informed of rights.) Court to appt counsel. US motions for detention-granted. Deft. is remanded to the custody of the USMS. [1:97-m-83] (ntho) [Entry date 01/29/97] [Edit date 01/29/97]
1/28/97	3	ORDER OF TEMPORARY DETENTION as to Charles Thomas Dickerson (Signed by Magistrate Judge W. C. Sewell). Copies sent. [1:97-m- 83] (ntho) [Entry date 01/29/97]
1/30/97	—	Preliminary Examination/Detention Hearing as to Charles Thomas Dickerson held before Magistrate Judge W. C. Sewell (Tape 46.) USA appeared through: R. Spencer. Dft(s) appeared through: w/counsel; J. McCarthy. US adduced evidence—agent adopts the affidavit as his testimony. Deft. cross examines the witness. US rests. Court finds PC. US has no additional evidence as to the issue of detention. Deft. motions for bond w/electronic monitoring. PR bond is set w/the following conditions; maintain-seek employment, may not depart the Wash. metro area w/o prior approval, risede [sic] w/Kathy Derrington—3rd party custodian. avoid contact w/ James Rodchester, or any person identified by the US as a witness or deft. except in the presence of an atty. Report to pts, comply w/ curfews imposed by PTS, refrain from possessing a fire arm, refrain from excessive use of alcohol, and any use or unlawful poss. of a narcotic drug, undergo substance abuse testing/treatment as directed by PTS, electronic monitoring. ORDER IS STAYED UNTIL 5:00 PM, JANUARY 31, 1997. [1:97-m-83] (ntho) [Entry date 01/30/97]

DATE	NO.	PROCEEDINGS
1/30/97	4	ORDER Setting Conditions of Release as to Charles Thomas Dickerson (Signed by Magistrate Judge W. C. Sewell). Copies set. Order stayed until 1-31-97 @ 5:00 pm. [1:97-m-83] (ntho) [Entry date 01/30/97]
1/30/97	5	MOTION to lift stay of release order as to Charles Thomas Dickerson by USA [1:97-m-83] (ntho) [Entry date 01/31/97]
1/30/97	—	Oral ORDER as to Charles Thomas Dickerson granting [5-1] motion by USA as to Charles Thomas Dickerson (1) (Signed by Magistrate Judge W. C. Sewell) Copies Mailed: y. [1:97-m-83] (ntho) [Entry date 01/31/97]
1/30/97	—	notation staying order of execution of release is deleted on original conditions by Judge W. C. Sewell as to Charles Thomas Dickerson [1:97-m-83] (ntho) [Entry date 01/31/97]
1/31/97	6	AMENDED ORDER setting conditions of release as to Charles Dickerson (Signed by Magistrate Judge W. C. Sewell) [1:97-m-83] (ntho) [Entry date 01/31/97]
2/3/97	—	DEFT. released on Bond. ORDER Setting Conditions of Release—executed. Deft. released. Copies sent. [1:97-m-83] (jsch) [Entry date 02/03/97]
2/19/97	7	JOINT MOTION by Charles Thomas Dickerson and USA to Extend Time to Indict thru 3/31/97 [1:97-m-83] (rtra) [Entry date 02/27/97]
2/25/97	8	ORDER as to Charles Thomas Dickerson granting [7-1] joint motion by Charles Thomas Dickerson and USA to Extend Time to Indict thru 3/31/97 as to Charles Thomas Dickerson (1) (Signed by Judge Albert V. Bryan Jr.) Copies Mailed: 02.25.97 [1:97-m-83] (rtra) [Entry date 02/27/97]

DATE	NO.	PROCEEDINGS
3/25/97	9	JOINT MOTION by Charles Thomas Dickerson and USA to Extend Time to Indict thru 4/30/97 [1:97-m-83] (rtra) [Entry date 03/26/97]
3/25/97	10	ORDER as to Charles Thomas Dickerson granting [9-1] joint motion by Charles Thomas Dickerson and USA to Extend Time to Indict thru 4/30/97 as to Charles Thomas Dickerson (1) (Signed by Judge Albert V. Bryan Jr.) Copies Mailed: 03.25.97 [1:97-m-83] (rtra) [Entry date 03/26/97]
4/16/97	11	INDICTMENT, a true bill, returned in open court before JCC as to Charles Thomas Dickerson (1) count(s) 1, 2, 3, 4, 5, 6, 7. Summons to issue. Counsel notified of arraignment. (bonn) [Entry date 04/18/97] [Edit date 04/18/97]
4/16/97	—	Arraignment set for 9:00 4/28/97 (bonn) [Entry date 04/18/97]
4/17/97	—	SUMMONS returnable for 04/28/97 at 9:00 a.m. issued & given to USMS for service for Charles Thomas Dickerson (bonn) [Entry date 04/18/97]
4/28/97	—	Arraignment as to Charles Thomas Dickerson held. Deft. WFA, PNG and demanded trial by jury. 20 days to file motions. Motion Hearing set for 9:00 5/30/97 for Charles Thomas Dickerson Jury Trial set for 10:00 7/1/97 for Charles Thomas Dickerson; before Judge James C. Cacheris (Reporter) USA appeared through: R. Spencer Dft(s) appeared with: J. McCarthy. All exhibits, etc. to be filed w/clerk w/i 5 working days before trial. Deft's bond cont. (rwar) [Entry date 04/30/97]

DATE	NO.	PROCEEDINGS
4/28/97	—	APPEARANCE Through Counsel by Charles Thomas Dickerson (rwar) [Entry date 04/30/97]
4/28/97	12	MARSHAL'S return on summons returned unexecuted 04/24/97 as to Charles Thomas Dickerson (bonn) [Entry date 05/01/97]
5/19/97	13	MOTION by Charles Thomas Dickerson for Disclosure of All Composite Drawings Created in Investigation and related evidence of exculpatory nature (bonn) [Entry date 05/19/97]
5/19/97	14	MOTION by Charles Thomas Dickerson to Compel Disclosure of Favorable Evidence against Witnesses not called to the stand by the govt (bonn) [Entry date 05/19/97]
5/19/97	15	MOTION by Charles Thomas Dickerson for Production of Interview Reports with Individuals who will not be called as witnesses at trial (bonn) [Entry date 05/19/97]
5/19/97	16	MOTION by Charles Thomas Dickerson for Disclosure of Electronic Surveillance (bonn) [Entry date 05/19/97]
5/19/97	17	MOTION for leave to submit questionnaire to the jury panel pretrial and for leave individually to question each member of the venire filed by Charles Thomas Dickerson (bonn) [Entry date 05/19/97]
5/19/97	18	MOTION by Charles Thomas Dickerson to Suppress Statements and Physical Evidence (bonn) [Entry date 05/19/97]
5/19/97	19	MOTION for notice by the govt of the intention to use evidence arguably subject to suppression filed by Charles Thomas Dickerson (bonn) [Entry date 05/19/97]

DATE	NO.	PROCEEDINGS
5/19/97	20	EX PARTE MOTION filed underseal by Charles Thomas Dickerson (Denied 05/20/97 by AVB) (bonn) [Entry date 05/21/97]
5/20/97	21	ORDER as to Charles Thomas Dickerson, for Discovery & Inspection—entered & filed (Signed by Judge Albert V. Bryan Jr.) Copies Mailed: Yes (bonn) [Entry date 05/21/97]
5/23/97	22	OPPOSITION to Deft's Motions filed by US (bonn) [Entry date 05/27/97]
5/27/97	23	MEMORANDUM by Charles Thomas Dickerson in support of Deft's motion to Suppress Statements and Physical Evidence (jwil) [Entry date 05/27/97]
5/28/97	24	SUPPLEMENTAL MEMORANDUM by Charles Thomas Dickerson in support of Deft's motion to Suppress Statements and Physical Evidence (jwil) [Entry date 05/28/97]
5/29/97	25	SUPPLEMENTAL MEMORANDUM by USA as to Charles Thomas Dickerson in opposition to Deft's motions to suppress (jwil) [Entry date 05/29/97]
5/30/97	—	Motion hearing held as to Charles Thomas Dickerson re: [18-1] motion by Charles Thomas Dickerson to Suppress Statements and Physical Evidence before Judge James C. Cacheris (Reporter: Farmer) USA appeared through: R. Spencer Dft(s) appeared with J. McCarthy. Evidence heard. Motion taken under advisement. (rwar) [Entry date 06/06/97]
6/3/97	26	SECOND SUPPLEMENTAL MEMORANDUM by Charles Thomas Dickerson in support of [18-1] motion to Suppress Statements and Physical Evidence (bonn) [Entry date 06/03/97]

DATE	NO.	PROCEEDINGS
6/18/97	27	EX PARTE UNDERSEAL MOTION by Charles Thomas Dickerson for counsel to withdraw (bonn) [Entry date 06/25/97]
6/18/97	28	ORDER granting ex parte underseal [27-1] motion—entered & filed (Signed by Judge James C. Cacheris) Copies Mailed: Yes (bonn) [Entry date 06/25/97]
6/18/97	29	ORDER as to Charles Thomas Dickerson, Appointing James W. Hundley as counsel—entered & filed (Signed by Judge James C. Cacheris) Copies Mailed: Yes (bonn) [Entry date 06/25/97]
6/20/97	30	MOTION by Charles Thomas Dickerson to Continue Trial Date (bonn) [Entry date 06/25/97]
6/20/97	31	ORDER that this matter is continued for trial by jury to 08/19/97. This time is excludable under the Speedy Trial—entered & filed (Signed by Judge James C. Cacheris) Copies Mailed: Yes (bonn) [Entry date 06/25/97]
6/24/97	32	SUPERSEDING INDICTMENT as to Charles Thomas Dickerson (1) count(s) 1s, 2s, 3s, 4s, 5s, 6s, 7s. Counsel notified of arraignment. (bonn) [Entry date 06/25/97]
6/30/97	—	Arraignment as to Charles Thomas Dickerson on superseding ind. held Motion Hearing set for 9:00 7/25/97 for Charles Thomas Dickerson Motion Filings due w/i 10 days; Jury Trial set for 10:00 8/19/97 for Charles Thomas Dickerson; before Judge Albert V. Bryan Jr. (Reporter: McCoy.) USA appeared through: Spencer. Dft(s) appeared w/counsel Hundley. All exhibits, etc. to be filed w/Clerk w/i 5 working days before trial. Deft. released on present bond. (spoo) [Entry date 07/10/97]

DATE	NO.	PROCEEDINGS
7/1/97	33	TRANSCRIPT as to Charles Thomas Dickerson of proceedings of 05/30/97 (JCC) (bonn) [Entry date 07/03/97]
7/1/97	34	ORDER that deft's motion to suppress is granted at [sic] to his statements offered at the FBI Field Office on 01/27/97, and its items discovered during the search of his home that evening. That deft's motion to suppress is denied as to the search of his Oldsmobile Cierra—entered & filed (Signed by Judge James C. Cacheris) Copies Mailed: Yes (bonn) [Entry date 07/03/97]
7/1/97	35	MEMORANDUM OPINION as to Charles Thomas Dickerson—filed (Signed by Judge James C. Cacheris) (bonn) [Entry date 07/03/97]
7/11/97	36	MOTION by Charles Thomas Dickerson to Suppress (bonn) [Entry date 07/14/97]
7/11/97	37	NOTICE of Hearing as to Charles Thomas Dickerson:, Motion Hearing set for 9:00 7/25/97 for Charles Thomas Dickerson for [36-1] motion by Charles Thomas Dickerson to Suppress (bonn) [Entry date 07/14/97]
7/11/97	38	MOTION by Charles Thomas Dickerson in Limine (bonn) [Entry date 07/14/97]
7/11/97	39	NOTICE of Hearing as to Charles Thomas Dickerson:, Motion Hearing set for 9:00 7/25/97 for Charles Thomas Dickerson for [38-1] motion by Charles Thomas Dickerson in Limine (bonn) [Entry date 07/14/97]
7/11/97	40	MOTION by Charles Thomas Dickerson for Reconsideration of [34-1] order of 07/01/97 (bonn) [Entry date 07/14/97]

DATE	NO.	PROCEEDINGS
7/11/97	41	NOTICE of Hearing as to Charles Thomas Dickerson:, Motion Hearing set for 9:00 7/25/97 for Charles Thomas Dickerson for [40-1] motion by Charles Thomas Dickerson for Reconsideration of [34-1] order of 07/01/97 (bonn) [Entry date 07/14/97]
7/15/97	42	MOTION as to Charles Thomas Dickerson by USA for Reconsideration of 07/01/97 Order (bonn) [Entry date 07/18/97]
7/21/97	43	AMENDED NOTICE of Hearing as to Charles Thomas Dickerson:, Motion Hearing set for 9:00 8/1/97 for Charles Thomas Dickerson for [40-1] motion by Charles Thomas Dickerson for Reconsideration of [34-1] order of 07/01/97, set for 9:00 8/1/97 for Charles Thomas Dickerson for [38-1] motion by Charles Thomas Dickerson in Limine, set for 9:00 8/1/97 for Charles Thomas Dickerson for [36-1] motion by Charles Thomas Dickerson to Suppress (jwil) [Entry date 07/21/07]
7/28/97	44	MEMORANDUM by Charles Thomas Dickerson in opposition to [42-1] motion by USA for Reconsideration (jwil) [Entry date 07/28/97]
7/28/97	45	RESPONSE by USA as to Charles Thomas Dickerson in opposition to [38-1] motion by Charles Thomas Dickerson in Limine (bonn) [Entry date 07/29/97]
7/28/97	46	OPPOSITION by USA to [40-1] motion for Reconsideration of [34-1] order of 07/01/97, [36-1] motion to Suppress (bonn) [Entry date 07/29/97]
8/1/97	—	Motion hearing held before Judge Cacheris as to Charles Thomas Dickerson re: (Farmer) USA appeared through: Rob Spencer/Kathy

DATE	NO.	PROCEEDINGS
		Kahoe. Dft(s) appeared through: James Hundley. On for cross motions for reconsideration—argued and under advisement. Deft motion in limine—argued and granted in part and denied in part. Order to follow. (jsol) [Entry date 08/01/97]
8/1/97	47	SECOND SUPPLEMENTAL Opposition by USA as to Charles Thomas Dickerson Motion to Suppress—field 6/3/97 (jsol) [Entry date 08/04/97]
8/4/97	48	MEMORANDUM OPINION as to Charles Thomas Dickerson (Signed by Judge James C. Cacheris) c/m (jsol) [Entry date 08/04/97]
8/4/97	49	ORDER in accordance w/Memo Opinion as to Charles Thomas Dickerson that the [42-1] motion by USA for Reconsideration of 07/01/97 Order is denied: [40-1] motion by Charles Thomas Dickerson for Reconsideration of [34-1] order of 07/01/97 is denied (Signed by Judge James C. Cacheris) Copies Mailed: y (jsol) [Entry date 08/04/97]
8/6/97	50	ORDER that this matter is stayed pending appeal. Counsel shall appear at 9:00 a.m. on 11/14/97 to report the status of the appeal as to Charles Thomas Dickerson—entered & filed (Signed by Judge James C. Cacheris) Copies Mailed: Yes (bonn) [Entry date 08/07/97]
9/2/97	51	TRANSCRIPT filed in case as to Charles Thomas Dickerson for dates of August 1, 1997 (clar) [Entry date 09/02/97]
9/2/97	52	NOTICE of orders of 08/04/97 and 07/01/97 filed by USA as to Charles Thomas Dickerson (bonn) [Entry date 09/08/97]

DATE	NO.	PROCEEDINGS
9/8/97	—	Notice of appeal and copy of docket entries and orders of 08/04/97 & 07/01/97 as to Charles Thomas Dickerson to USCA (bonn) [Entry date 09/08/97]
9/17/97	—	USCA Case Number as to Charles Thomas Dickerson Re: [52-1] appeal USCA Number: 97-4750 Case Manager: Barbara Rowe (bonn) [Entry date 09/24/97]
9/24/97	—	CERTIFICATE designating the record as complete for purposes of appeal transmitted to USCA. (bonn) [Entry date 09/24/97]
10/10/97	53	MOTION by Charles Thomas Dickerson to Modify Conditions of Release (bonn) [Entry date 10/14/97]
10/10/97	54	NOTICE of Hearing as to Charles Thomas Dickerson:, Motion Hearing set for 9:00 10/17/97 for Charles Thomas Dickerson for [53-1] motion by Charles Thomas Dickerson to Modify Conditions of Release (bonn) [Entry date 10/14/97]
10/16/97	55	ORDER as to Charles Thomas Dickerson granting [53-1] motion by Charles Thomas Dickerson to Modify Conditions of Release as to Charles Thomas Dickerson (1) The Courts [sic] conditions of release are modified to permit the Defendant to actively seek and maintain employment. All other condition [sic] of release in place prior to the entry of this order shall remain in effect. (signed by Magistrate Judge W. Curtis Sewell) Copies Mailed: 10.16.97 (rtra) [Entry date 10/16/97]
8/14/98	56	MOTION by Charles Thomas Dickerson to Modify Conditions of Release (bsha) [Entry date 08/17/98]

DATE	NO.	PROCEEDINGS
8/14/98	57	NOTICE of Hearing as to Charles Thomas Dickerson:, Motion Hearing set for 9:00 8/21/98 for Charles Thomas Dickerson for [56-1] motion by Charles Thomas Dickerson to Modify Conditions of Release (bsha) [Entry date 08/17/98]
8/17/98	58	RESPONSE by USA as to Charles Thomas Dickerson in opposition to [56-1] motion by Charles Thomas Dickerson to Modify Conditions of Release (rtra) [Entry date 08/18/98]
8/21/98	—	Motion hearing held as to Charles Thomas Dickerson re: [56-1] motion by Charles Thomas Dickerson to Modify Conditions of Release before Magistrate Judge W. C. Sewell (Tape #176) USA appeared through: R. Spencer. Dft(s) appeared through: NOT-atty; Hundley is present. Deft. argues to have electronic monitoring removed—US argues that it should remain. Defts motion to modify bond in denied. motion to modify bond is argued and-denied (ntho) [Entry date 08/21/98]
8/21/98	59	ORDER as to Charles Thomas Dickerson denying [56-1] motion by Charles Thomas Dickerson to Modify Conditions of Release as to Charles Thomas Dickerson (1) (Signed by Magistrate Judge W. C. Sewell) Copies Mailed: y (ntho) [Entry date 08/21/98]
8/31/98	60	Defendant's APPEAL of Order Denying Motion to Modify Conditions of Release by Charles Thomas Dickerson (agil) [Entry date 09/03/98]
8/31/98	61	NOTICE of Hearing as to Charles Thomas Dickerson:, for 9/11/98 @ 9:00 a.m. (agil) [Entry date 09/03/98]

DATE	NO.	PROCEEDINGS
9/9/98	62	OPPOSITION to deft's appeal of order denying his motion to modify conditions of release filed by US. (bonn) [Entry date 09/10/98]
9/10/98	—	Minute entry as to Charles Thomas Dickerson: before Judge T. S. Ellis III (Reporter: S. Moses) USA appeared through: Spencer. Deft. appeared w/ counsel Hundley. Matter came on for hearing on deft's appeal of Mag. Judge's decision denying motion to modify conds. of release—argued and denied. Deft. cont'd on bond. (pete) [Entry date 09/14/98]
9/10/98	63	ORDER that for reasons stated from the bench, deft's conds. of release be cont'd as ordered by the Court on 1/30/97, ent—filed (Signed by Judge T. S. Ellis III) Copies Mailed: yes (pete) [Entry date 09/14/98]
2/9/99	64	COPY of opinion of USCA, decided 02/08/99, reversing the district's court order suppressing the statements of deft. and remanding the case for fu ther proceedings. (bonn) [Entry date 02/10/99]
2/17/99	65	COPY of opinion of USCA decided 02/08/99, reversing the decision of the USDC and remanding for further proceedings (bonn) [Entry date 02/23/99]
2/24/99	66	Letter from USCA that the mandate will not issue at this time because a petition for rehearing has been filed as Charles Thomas Dickerson (bonn) [Entry date 02/25/99]
4/1/99	67	ORDER from the USCA that the court denies the petition for rehearing en banc as to Charles Thomas Dickerson (bonn) [Entry date 04/02/99]

DATE	NO.	PROCEEDINGS
4/8/99	68	CERTIFIED copy of Judgment of USCA together with opinion, decided 02/08/99, reversing the district court's order regarding the suppression of evidence and remanding for further proceedings (bonn) [Entry date 04/08/99]
4/12/99	69	ORDER that this matter is placed on the arraignment calendar for 05/10/99 for setting of a trial date as to Charles Thomas Dickerson—entered & filed (Signed by Judge James C. Cacheris) Copies Mailed: Yes (bonn) [Entry date 04/12/99]
4/12/99	—	Arraignment set for 9:00 5/10/99 for Charles Thomas Dickerson (bonn) [Entry date 04/12/99]
4/16/99	70	ORDER from the USCA that the grants [sic] deft. Charles Thomas Dickerson motion to recall and stay the mandate pending the filing of a petition for writ of certiorari pursuant to Rule 41(d) (bonn) [Entry date 04/19/99]
8/10/99	71	Letter from USCA that a writ of certiorari has been filed as to Charles Thomas Dickerson (bonn) [Entry date 08/11/99]
12/10/99	72	Copy of Letter from USCA that a Supreme Court Order was filed on 12/6/99 granting certiorari as to Charles Thomas Dickerson. (dper) [Entry date 12/14/99]

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 97-4750

UNITED STATES OF AMERICA,
Plaintiff-Appellant,
v.

CHARLES THOMAS DICKERSON,
Defendant-Appellee.

DOCKET ENTRIES

DATE	PROCEEDINGS
9/15/97	Criminal case docketed. (bhr)
9/15/97	CLERK ORDER FILED appointing James W. Hundley as CJA counsel for Appellee Charles Thomas Dickerson [2630842-1] Nunc Pro Tunc Date: 09/02/97. Copies to all counsel. [97-4750] (bhr)
9/15/97	Docketing notice issued. [97-4750] (bhr)
9/17/97	Docketing statement filed by Appellant [2633112-1] T/S needed: y; T/S already on file: y . [97-4750] (bhr)
9/17/97	Briefing order filed. [97-4750] Appellant brief/ joint appendix due 10/22/97 for US . (bhr)
9/18/97	Appearance form filed by Vincent L. Gambale. [97-4750] (bhr)
9/26/97	Certification of ROA complete and retained in the District Court. . [97-4750] (bhr)

DATE	PROCEEDINGS
10/16/97	Motion filed by Appellant US to extend time to file appellant(s) brief until 11/5/97 [2648986-1] . [97-4750] (bhr)
10/16/97	CLERK ORDER FILED granting motion to extend time to file a's brief [2648986-1] Appellant(s) brief/joint appendix now due 11/5/97 for US Conf aty recomm?: n. Number of days granted: 14. Copies to all counsel. [97-4750] (bhr)
10/27/97	Appearance form filed by James Warren Hundley for Appellee Charles Thomas Dickerson. [97-4750] (dsd)
11/5/97	Brief joint appendix filed by Appellant US. Type of Service: PM Copies of brief: 8 # brf pages: 62 Copies of apx: 6 # apx pages: 168 Sufficient? [Y/N] : Y 2-sided copying: Y SEALED?[Y/N] : Y [97-4750] Appellee brief due 11/26/97 for Charles Thomas Dickerson . (aww)
11/10/97	Motion filed by Potential Amicus Curiae Washington Legal, Potential Amicus Curiae Safe Streets Coaliti to file amicus brief [2663221-1] [97-4750] (bhr)
11/10/97	CLERK ORDER FILED granting motion to file amicus brief [2663221-1] Amicus brief due 11/10/97 for Safe Streets Coaliti, for Washington Legal . Copies to all counsel. [97-4750] (bhr)
11/10/97	Amicus curiae brief filed by Amicus Curiae Washington Legal, Amicus Curiae Safe Streets Coaliti. Type of Service: G-per clerk order dated 11/10/97 # am.br copies: 8 Sufficient [Y/N]?: Y. . [97-4750] (llh)
11/24/97	Appearance form filed by Paul George Cassell. [97-4750] (bhr)
11/28/97	Case tentatively calendared for oral argument Term: February Place: Ric, Bal, Spa. SUBMISSION DEADLINE: 12/8/97. (jc)

DATE	PROCEEDINGS
12/1/97	Brief filed by Appellee Charles Thomas Dickerson. Type of Service: PM Copies: 6 # brf pages: 29. Sufficient [Y/N]: Y. [97-4750] (llh)
12/15/97	Case calendared for oral argument. [97-4750] (jc)
12/15/97	Reply brief filed by Appellant US. Type of Service: PM Copies of brief: 8 # brf pages: 20. Sufficient [Y/N]: Y. . . [97-4750] (llh)
1/9/98	Supplemental authorities (FRAP 28(j)) filed by Amicus Curiae Washington Legal, Amicus Curiae Safe Streets Coalition [2696078-1] [97-4750] (llh)
1/14/98	Motion filed by Amicus Curiae Washington Legal, Amicus Curiae Safe Streets Coaliti to participate in oral argument [2698577-1] [97-4750] (bhr)
1/21/98	COURT ORDER filed granting motion of amici curiae to participate in oral arg [2698577-1] sharing 5 minutes of the government's allotted time. Copies to all counsel. [97-4750] (bhr)
1/30/98	Oral argument heard. James Warren Hundley for Appellee Charles Thomas Dickerson Courtroom Deputy: br. [97-4750] (bwr)
2/8/99	Published, authored opinion filed. [97-4750] (bhr)
2/8/99	Judgment order filed. Decision: reversed and remanded with dissent. [97-4750] (bhr)
2/8/99	Criminal Justice Act 20 voucher #0644435 issued to James Warren Hundley. [97-4750] (bhr)
2/19/99	Motion filed by Potential Amicus Curiae Federal Public Def for leave to file amicus brief in support of appellant's petition for rehearing which is forthcoming. Brief Tendered? (Y/N): n [2936443-1]. [97-4750] (bhr)

DATE	PROCEEDINGS
2/22/99	Motion filed by Potential Amicus Curiae American Civil Lib for leave to file amicus brief in support of petition for rehearing and rehearing en banc. Brief Tendered? (Y/N): y [2937628-1]. [97-4750] (bhr)
2/22/99	Motion filed by Potential Amicus Curiae NACDL for leave to file amicus brief in support of petition for rehearing. Brief Tendered? (Y/N): y [2937645-1] [97-4750] (bhr)
2/22/99	Petition filed by Appellee Charles Thomas Dickerson for rehearing. Number copies filed: 20 [2937761-1]., for rehearing en banc. Number of copies filed: 20 [2937761-2] [97-4750] (dsd)
2/25/99	Document referencing motion for rehearing [2937761-1], motion for rehearing en banc [2937761-2] filed by Appellee (Replacements of the initial pet. reh. filed. Some corrections were made) [2939673-1] [97-4750] (bhr)
2/26/99	COURT ORDER filed granting motion to file am. br support pet. reh [2936443-1] Amicus brief due 3/8/99 for Office of the Public Defender. Copies to all counsel. [97-4750] (bhr)
2/26/99	Response/answer requested to motion for rehearing [2937761-1], motion for rehearing en banc [2937761-2] for US due 3/8/99. [97-4750] (bhr)
3/8/99	Amicus curiae brief in support of the petition for rehearing filed by Office of the Public Defender. # am. br copies: 8 Sufficient [Y/N]?: y. n. (bhr)
3/8/99	Response/answer filed [2946326-1] by Appellant US to motion for rehearing [2937761-1], motion for rehearing en banc [2937761-2] [97-4750] (bhr)
3/12/99	Response/answer requested to motion for rehearing [2937761-1], motion for rehearing en banc [2937761-2] [97-4750] (bhr)

DATE	PROCEEDINGS
3/15/99	Appearance form filed by Lisa Simotas. [97-4750] (bhr)
3/22/99	Response/answer filed [2954848-1] by Amicus Curiae Washington Legal to motion for rehearing [2937761-1], motion for rehearing en banc [2937761-2] [97-4750] (bhr)
3/30/99	COURT ORDER filed granting motion to file am. br support pet. reh [2937628-1], granting motion to file am. br support pet. reh [2937645-1] Copies to all counsel. [97-4750] (psc)
3/30/99	COURT ORDER filed denying motion for rehearing [2937761-1], denying motion for rehearing en banc [2937761-2] Copies to all counsel. [97-4750] (psc)
4/1/99	Corrected order filed acting on referencing motion for rehearing [2937761-1], referencing motion for rehearing en banc [2937761-2]. [97-4750] (dsd)
4/7/99	Mandate issued. [97-4750] (bhr)
4/9/99	Motion filed by Appellee Charles Thomas Dickerson to recall the mandate pending filing a petition for writ of certiorari to the Supreme Court. [2966872-1]. [2966872-1] [97-4750] (bhr)
4/14/99	COURT ORDER filed granting motion to recall the mandate [2966872-1] staying the mandate [2969069-1]. until pending filing of cert Copies to all counsel. [97-4750] (dsd)
4/15/99	Motion filed by Appellant US [2969699-1] for reconsideration of court order to stay/recall mandate [2969069-1] [97-4750] (bhr)
4/15/99	Response/answer requested to motion for reconsideration [2969699-1] Response/answer due 4/26/99 for Safe Streets Coaliti, for Washington Legal, for Charles Thomas Dickerson. [97-4750] (bhr)

DATE	PROCEEDINGS
4/26/99	Response/answer filed [2975035-1] by Amicus Curiae NACDL to motion for reconsideration [2969699-1] [97-4750] (bhr)
4/26/99	Response/answer filed [2975039-1] by Amicus Curiae Washington Legal to motion for reconsideration [2969699-1] [97-4750] (bhr)
4/26/99	Response/answer filed [2975640-1] by Appellee Charles Thomas Dickerson to motion for reconsideration [2969699-1] [97-4750] (bhr)
5/3/99	COURT ORDER filed denying motion for reconsideration of order recalling mandate [2969699-1] Copies to all counsel. [97-4750] (bhr)
8/9/99	Supreme Court notice that petition for certiorari was filed on 07/30/99. Spct No.: 99-5525 Spct Pty 1: Charles Thomas Dickerson Spct Pty 2: United States. [97-4750] (cw)
12/9/99	Supreme Court order received granting petition certiorari [3035303-1] on 12/06/99. [97-4750] (elf)

INTERROGATION; ADVICE OF RIGHTS

YOUR RIGHTS

Place Wahington, D.C.
Date 1/27/97
Time 9:40 pm

Before we ask you any questions, you must understand your rights.

You have the right to remain silent.

Anything you say can be used against you in court.

You have the right to talk to a lawyer for advice before we ask you any questions and to have a lawyer with you during questioning.

If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish.

If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

WAIVER OF RIGHTS

I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Signed /s/ Charles Dickerson

Witness: /s/ Christopher Lawlor SA, FBI, WFO,
1/27/97

Witness: Det. Thomas Durkin #783

Time: 9:41 p.m.

FEDERAL BUREAU OF INVESTIGATION
Date of transcription 1/29/97

CHARLES THOMAS DICKERSON, black male, date of birth October 8, 1972, SSAN: 579-98-6292, 8313 Garland Avenue, apartment three, Takoma Park, Maryland, was interviewed by Special Agent Christopher Lawlor and Alexandria, Virginia Police Department Detective Thomas Durkin at the Washington Field Office of the Federal Bureau of Investigation (FBI). DICKERSON was advised of the identities of the interviewers and the nature of the interview, that being his knowledge of a bank robbery that occurred in Alexandria, Virginia, on January 24, 1997. DICKERSON was advised of his rights, signed the waiver portion of the rights form, and provided the following information:

Initially, DICKERSON stated that on Friday, January 24, 1997, he drove to the Old Town Alexandria, Virginia, area to look at a seafood restaurant where he planned to take a friend for her birthday. The friend's nickname was "SULKY" and her birthday was February 15th. DICKERSON did not know "SULKY's" true name. DICKERSON was driving his white Oldsmobile Ciera. At about 9:30 or 10:00 a.m., after seeing the restaurant, he parked his car and went to buy a bagel. When he returned to his car, he saw a friend named Terrance (Last Name Unknown--LNU), who asked for a ride to Suitland, Maryland. DICKERSON described TERRANCE LNU as a black male, approximately 19 to 20 years old, light complected, with thick, braided hair. TERRANCE LNU was wearing a light-colored jacket with a hood and blue jeans. TERRANCE was not carrying anything. DICKERSON stated that he drove TERRANCE LNU to Suitland, Maryland, and dropped him off near a liquor store, between Suitland Road and Silver

Hill Road. DICKERSON then went to the Tooley Street Station area, to the home of a girl named MISSY LNU, to visit with a girl named TOYA LNU. DICKERSON returned to his home in Takoma Park, Maryland, at about 1:00 p.m., and stayed there until about 3:30 or 4:00 p.m.

At this time, during the interview, DICKERSON was told that FBI agents had been surveilling his house since prior to 1:00 p.m., and that he was not observed coming to or from the house. DICKERSON was also advised that a federal search warrant had just been issued and that agents were about to start a search of his residence.

Shortly thereafter, DICKERSON recanted his first account of what occurred on January 24, 1997, and provided the following information.

DICKERSON said that when FBI agents searched his home, they would likely find dye-stained money and a silver-colored, .45 caliber pistol. DICKERSON said that he came to the door, when agents initially knocked at his door, with the pistol in his hand. DICKERSON decided to hide the gun prior to opening the door for the agents.

DICKERSON knows a man named JIMMY LNU, who is married to DICKERSON's cousin, RENA THOMAS. JIMMY LNU lives in the Oxon Hill Village apartments in Oxon Hill, Maryland. DICKERSON knows that JIMMY LNU is a bank robber, because JIMMY LNU told him that he was wanted in Atlanta, Georgia, for bank robbery. JIMMY LNU fled Georgia three to four months ago, after committing fifteen to twenty bank robberies in the Atlanta, Georgia area. On three or four occasions since September, 1996, JIMMY LNU brought dye-stained money to DICKERSON and asked him to clean the money. JIMMY LNU taught DICKERSON

how to clean dye from money by using a product called M-1 cleaner. DICKERSON said that he got the silver, .45 caliber pistol from JIMMY LNU on Friday, January 24, 1997. DICKERSON said that, in the past, he has seen JIMMY LNU with a black, snub-nosed, .38 caliber revolver and a black, long-barrelled, .38 caliber revolver.

On Friday, January 24, 1997, DICKERSON and JIMMY LNU drove to Alexandria, Virginia, to look at a seafood restaurant, because DICKERSON wanted to make reservations for Valentine's day. The restaurant was closed, so DICKERSON drove westbound on King Street to buy bagels. DICKERSON parked in an area about two blocks south of King Street and walked to the bagel store, while JIMMY LNU waited in the car. As DICKERSON was walking away from the car, he saw JIMMY LNU get out of the car and walk away. When DICKERSON returned to the car, after buying a bagel, JIMMY LNU was in the car. DICKERSON got in the car and started to drive away. JIMMY LNU told DICKERSON to stop the car, and DICKERSON complied. JIMMY LNU then got out of the car and walked out of DICKERSON's sight. DICKERSON thought that JIMMY LNU may have gotten out of the car, because he needed to use a bathroom. A short while later, JIMMY LNU came back to the car and told DICKERSON to drive off. After traveling only a short distance, near a stop sign, JIMMY LNU told DICKERSON that he wanted to put something in the trunk. DICKERSON used the remote button to open the trunk. JIMMY LNU got out and went to the trunk area, put something in the trunk, and then returned to the car. As they drove away, they approached a traffic signal that was red, and JIMMY LNU told DICKERSON to "run" the light. DICKERSON noticed a CHEVY CHASE BANK on the corner and thought that JIMMY LNU may have robbed a bank.

After leaving Alexandria, Virginia, DICKERSON drove drove JIMMY LNU to the Tooley Street Station area, near Suitland, Maryland. They went to MISSY LNU's house and JIMMY LNU went upstairs for awhile. They then left MISSY's house and got haircuts at STYLES IN MOTION, on Suitland Road. After they got haircuts and returned to the car, JIMMY LNU gave DICKERSON the silver-colored, .45 caliber pistol. JIMMY LNU retrieved the gun from under the passenger-side floor mat. Prior to JIMMY LNU removing the gun, DICKERSON did not know it was there. DICKERSON then took JIMMY LNU to his apartment in Oxon Hill Village. While driving to Oxon Hill Village, they stopped at a liquor store off St. Barnabas Road. When they arrived at JIMMY LNU's apartment, they both went inside. JIMMY LNU then gave DICKERSON about forty or fifty dollars to cover gas and cellular telephone expenses.

Although he never said anything to JIMMY LNU, DICKERSON thought that "something was up."

At this time, during the interview, DICKERSON was shown a sheet of paper depicting photocopied pictures labeled CHARLES THOMAS DICKERSON, ALAN COURTNEY GREEN, and RODERICK PRIDE THOMAS. DICKERSON identified the picture of GREEN as JIMMY LNU. DICKERSON said that he and the other two men had been arrested outside a bank in Montgomery County, Maryland. THOMAS subsequently confessed to attempted bank robbery, and the charges against DICKERSON and JIMMY LNU "did not stand up in court." The three men had arrived at the bank in a car driven by DICKERSON, but DICKERSON was not aware that THOMAS planned to rob the bank.

DICKERSON was then advised that he was under arrest. At this time, DICKERSON volunteered to point

out JIMMY LNU's apartment. Prior to placing DICKERSON in the Alexandria Jail, DICKERSON directed the interviewers to the Oxon Hill Village apartments and pointed out JIMMY LNU's apartment.

Investigation on 1/27/97 at Washington, D.C.

File #91A-WF-206491-28 Date dictated 1/29/97

by SA Christopher Lawlor

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA

v.

CHARLES THOMAS DICKERSON,
Defendant.

Criminal No. 97-159-A

Count 1
18 U.S.C. § 371 (Conspiracy)

Counts 2-4
18 U.S.C. §§ 2113(a) and (d) and 2
(Bank Robbery/Aiding and Abetting)

Counts 5-7
18 U.S.C. §§ 924(c) and 2
(Use of Firearm During Crime of Violence/Aiding and Abetting)

SUPERSEDING INDICTMENT

JUNE 1997 TERM—At Alexandria

Count 1

(Conspiracy)

THE GRAND JURY CHARGES THAT:

From in or about September 1996 through in or about January 1997, in the Eastern District of Virginia and elsewhere, defendant CHARLES THOMAS DICKERSON

and unindicted co-conspirators, knowingly, willfully, and unlawfully combined, conspired, confederated, and agreed together with each other and with others known and unknown to this grand jury:

1. to commit offenses against the United States of America, namely:

a. *Bank Robbery,* in violation of Title 18, United States Code, Section 2113(a) and (d), by unlawfully, knowingly, and by force, violence, and intimidation, taking from the person and presence of another money belonging to and in the care, custody, and possession of banks, the deposits of which were then insured by the Federal Deposit Insurance Corporation, and in committing such offenses assaulting and putting in jeopardy the lives of persons in the banks by use of a dangerous weapon.

MANNER AND MEANS OF THE CONSPIRACY

The purpose of the conspiracy was to obtain money belonging to and in the care, custody, and possession of banks. The manner and means by which the conspirators conducted the conspiracy included the following:

1. It was part of the conspiracy that the defendant and his co-conspirators would survey or "case" a bank they intended to rob by having DICKERSON enter the bank and gather information about the size of the bank and its security features.

2. It was further part of the conspiracy that, following DICKERSON's surveillance of the bank, an unindicted co-conspirator or conspirators would enter the bank, approach a bank teller, display a handgun, and demand money from the teller.

3. It was further part of the conspiracy that an unindicted co-conspirator would hand the teller a backpack and order the teller to fill the backpack with money.

4. It was further part of the conspiracy that DICKERSON and his unindicted co-conspirators took money from federally insured banks.

5. It was further part of the conspiracy that DICKERSON and his unindicted co-conspirators would flee the scene of bank robberies in DICKERSON's car.

6. It was further part of the conspiracy that DICKERSON would wash and attempt to wash currency stained by the dye from exploding bank security devices.

OVERT ACTS

In furtherance of the aforementioned conspiracy and to effect the objects thereof, the defendant and co-conspirators performed the following overt acts in the Eastern District of Virginia and elsewhere:

1-8. On or about the dates set forth below, in the location set forth below, defendant DICKERSON and unindicted co-conspirators unlawfully, knowingly, and by force, violence, and intimidation, took from the person and presence of another, specifically a bank teller, money belonging to and in the care, custody, and possession of the federally insured bank set forth below, and in committing such offenses assaulted and put in jeopardy the life of persons in the bank by use of a dangerous weapon:

Overt Act	Date	Bank	Location
1.	9/19/96	First National Bank of Maryland	12041 Georgia Ave. Wheaton, MD
2.	10/8/96	Citizens National Bank	3386 Laurel/Ft. Meade Rd. Laurel, MD
3.	10/18/96	NationsBank	600 N. Washington St. Alexandria, VA
4.	11/8/96	Central Fidelity Bank	11 Canal Ctr. Plaza Alexandria, VA

Overt Act	Date	Bank	Location
5.	11/22/96	Maryland Federal Savings	9546 Livingston Rd. Ft. Washington, MD
6.	12/7/96	First Virginia Bank of Maryland	9412 Livingston Rd. Ft. Washington, MD
7.	1/8/97	Citizens National Bank	3314 Superior Ln. Bowie, MD
8.	1/24/97	First Virginia Bank	300 S. Washington St. Alexandria, VA

9. On or about September 27, 1996, in Wheaton, Maryland, defendant DICKERSON and two unindicted co-conspirators unlawfully, knowingly, and by force, violence, and intimidation, attempted to take from the person and presence of another, specifically a bank teller, money belonging to and in the care, custody, and possession of a federally insured bank, namely, the NationsBank, 2601 University Boulevard, Wheaton, Maryland, and in committing such offenses assaulted and put in jeopardy the life of persons in the bank by use of a dangerous weapon, namely a .357 magnum revolver.

10. On or about January 24, 1997, in Alexandria, Virginia, after defendant DICKERSON and two unindicted co-conspirators robbed the First Virginia Bank and fled in DICKERSON's car, defendant DICKERSON kept the silver, semi-automatic .45 caliber handgun used in the robbery.

(All in violation of Title 18, United States Code, Section 371).

Count 2

(Bank Robbery/Aiding and Abetting)

THE GRAND JURY FURTHER CHARGES THAT:

On or about October 18, 1996, in Alexandria, Virginia, in the Eastern District of Virginia, defendant CHARLES

THOMAS DICKERSON did unlawfully, knowingly, and by force, violence, and intimidation, take from the person and presence of another, specifically, bank teller Roanne Dwyer, approximately $4,660 in money belonging to and in the care, custody, and possession of a bank, specifically, NationsBank, 600 North Washington Street, Alexandria, Virginia, the deposits of which were then insured by the Federal Deposit Insurance Corporation, and in committing such offense did assault and put in jeopardy the life of persons in the bank by use of a dangerous weapon, namely, a large caliber handgun.

(In violation of Title 18, United States Code, Sections 2113(a) and (d) and 2.)

Count 3

(Bank Robbery/Aiding and Abetting)

THE GRAND JURY FURTHER CHARGES THAT:

On or about November 8, 1996, in Alexandria, Virginia, in the Eastern District of Virginia, defendant CHARLES THOMAS DICKERSON did unlawfully, knowingly, and by force, violence, and intimidation, take from the person and presence of another, specifically, bank teller Arintaye Uampornvanich, approximately $3,232 in money belonging to and in the care, custody, and possession of a bank, specifically, Central Fidelity Bank, 11 Canal Center Plaza, Alexandria, Virginia, the deposits of which were then insured by the Federal Deposit Insurance Corporation, and in committing such offense did assault and put in jeopardy the life of persons in the bank by use of a dangerous weapon, namely, a .32 caliber, semi-automatic, black handgun.

(In violation of Title 18, United States Code, Sections 2113(a) and (d) and 2.)

Count 4

(Bank Robbery/Aiding and Abetting)

THE GRAND JURY FURTHER CHARGES THAT:

On or about January 24, 1997, in Alexandria, Virginia, in the Eastern District of Virginia, defendant CHARLES THOMAS DICKERSON did unlawfully, knowingly, and by force, violence, and intimidation, take from the person and presence of another, specifically, bank teller Elsa O. Canda, approximately $876 in money belonging to and in the care, custody, and possession of a bank, specifically, First Virginia Bank, 300 South Washington Street, Alexandria, Virginia, the deposits of which were then insured by the Federal Deposit Insurance Corporation, and in committing such offense did assault and put in jeopardy the life of persons in the bank by use of a dangerous weapon, namely, a silver, .45 caliber, semi-automatic handgun.

(In violation of Title 18, United States Code, Sections 2113(a) and (d) and 2.)

Count 5

(Use of a Firearm During Crime of Violence/
Aiding and Abetting)

THE GRAND JURY FURTHER CHARGES THAT:

On or about October 18, 1996, in Alexandria, Virginia, in the Eastern District of Virginia, defendant CHARLES THOMAS DICKERSON, did knowingly and unlawfully use, and aid and abet the use of, a firearm, namely, a large caliber, semi-automatic handgun, during and in relation to a crime of violence for which he may be prosecuted in a court of the United States, specifically, the

crime of violence described in Count 2, which description is realleged and incorporated by reference in this Count.

(In violation of Title 18, United States Code, Sections 924(c) and 2.)

Count 6

(Use of a Firearm During Crime of Violence/
Aiding and Abetting)

THE GRAND JURY FURTHER CHARGES THAT:

On or about November 8, 1996, in Alexandria, Virginia, in the Eastern District of Virginia, defendant CHARLES THOMAS DICKERSON, did knowingly and unlawfully use, and aid and abet the use of, a firearm, namely, a .32 caliber semi-automatic, black handgun, during and in relation to a crime of violence for which he may be prosecuted in a court of the United States specifically, the crime of violence described in Count 3, which description is realleged and incorporated by reference in this Count.

(In violation of Title 18, United States Code, Sections 924(c) and 2.)

Count 7

(Use of a Firearm During Crime of Violence/
Aiding and Abetting)

THE GRAND JURY FURTHER CHARGES THAT:

On or about January 24, 1997, in Alexandria, Virginia, in the Eastern District of Virginia, defendant CHARLES THOMAS DICKERSON, did knowingly and unlawfully use, and aid and abet the use of, a firearm, namely, a silver, .45 caliber, semi-automatic handgun, during and in relation to a crime of violence for which he may be prosecuted in a court of the United States, specifically, the

crime of violence described in Count 4, which description is realleged and incorporated by reference in this Count.

(In violation of Title 18, United States Code, Sections 924(c) and 2.)

A TRUE BILL:

FOREPERSON

Alexandria, Virginia
Date:

/s/ Helen F. Fahey
HELEN F. FAHEY
United States Attorney

/s/ Robert A. Spencer
KATHLEEN M. KAHOE
ROBERT A. SPENCER
Assistant United States Attorneys

EXCERPT

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA ALEXANDRIA DIVISION

[Caption Omitted in Printing]

The above-entitled matter came on to be heard in the United States District Court, Alexandria, Virginia, commencing at 11:30 a.m. on May 30, 1997.

BEFORE: The Honorable James C. Cacheris, Presiding Chief Judge, United States District Court

* * * *

[2] PROCEEDINGS

THE COURT: I'll go ahead and take up U.S. v. Dickerson.

MR. SPENCER: Good morning, Your Honor, Rob Spencer for the government.

MR. McCARTHY: Joe McCarthy for Mr. Dickerson, Your Honor.

THE COURT: Okay. It's on the Motion to Suppress. I will take that first.

Go ahead.

MR. SPENCER: We're prepared to call Special Agent Christopher Lawlor of the FBI, Your Honor.

THE COURT: Okay.

CHRISTOPHER LAWLOR, called as witness by the United States, being first duly sworn, testified as follows:

MR. SPENCER: Your Honor, if I might, I'd like to point out to the Court that in my written submission in

the factual summary it gets the timing of the Miranda warning wrong, which I realized last night talking to Agent Lawlor, but I think from the testimony it will all be clear. I don't think it's significant to the outcome of the suppression motion.

THE COURT: All right, sir.

DIRECT EXAMINATION

[3] BY MR. SPENCER:

Q Give the Court your name, please.
A Christopher Lawlor, L-a-w-l-o-r.
Q You're a special agent with the FBI?
A Yes, I am.
Q Are you the case agent in U.S. versus Charles Dickerson?
A Yes.
Q That case involves a series of bank robberies?
A Yes.
Q On January 24, 1997, was a bank robbed?
A Yes.
Q Where was it robbed?
A In Alexandria, Virginia.
THE COURT: What date was this, Agent Lawlor?
THE WITNESS: January 24, 1997.
THE COURT: Okay. And which bank was it?
THE WITNESS: First Virginia Bank at 300 South Washington Street, Alexandria.
THE COURT: Okay.

BY MR. SPENCER:

Q What, if anything, did witnesses see at the get-away from that robbery?
A Witnesses saw the bank robber get into a white Oldsmobile Sierra, and they got the license plate, the D.C. [4] license plate.

Q Did you trace that plate?
A Yes, I did.
Q To whom was it traced?
A Charles Dickerson.
Q Did you get a home address for Mr. Dickerson?
A Yes, I did.
Q Where was that?
A Tacoma Park, Maryland
Q Did you go to that home address?
A Yes.
Q When?
A On Monday, the 27th of January.
Q What time of day?
A It was late in the afternoon, around 7 o'clock.
THE COURT: What time?
THE WITNESS: About 7 o'clock.
THE COURT: At 7 p.m. you went on January 27th to his house.

BY MR. SPENCER:

Q Were you alone or were you with other agents?
A With other agents.
Q Was that car there, the 1985 Olds. With the plate you had run?
A Yes, it was. On recollection, I think it was [5] probably closer to 5:30 when I arrived in the area, but it may be some time later I knocked on the door.
Q Around dinner time?
A Around dinner time.
Q Did you knock on the door of the defendant's apartment?
A Yes.
Q Was he there?
A Yes, he was.
Q What did you say when you knocked on the door?
A I identified myself as an FBI agent.

Q Did an answer come from within the door?
A Yes.
Q What was the answer?
A I was asked to hold on first.
THE COURT: You were asked to hold on?
THE WITNESS: Hold on. First, he came to the door and said hold on, and then came back a short time later.
THE COURT: Let me ask, when he came to the door and asked you to hold on, was it just a voice through the door or was the door opened?
THE WITNESS: A voice through the door.
THE COURT: Okay.

BY MR. SPENCER:

Q What, if anything, did the defendant later tell you [6] he had with him when he answered the door that first time?
A A 45 caliber semi-automatic pistol.
Q What happened after you heard "hold on"?
A It sounded like the person on the inside went away for a brief time and then came back to the door, answered the door.
THE COURT: Excuse me a minute, Mr. Spencer.
MR. SPENCER: I'm sorry, Your Honor.
THE COURT: You knocked on the door. What is the response you get from the door?
THE WITNESS: Asked who is it. We identified ourselves, and then I was told to hold on.
THE COURT: When were you told he had a 45 caliber pistol?
THE WITNESS: Several hours later during the interview that evening.
THE COURT: Oh, okay. All right.
MR. SPENCER: Thank you, Your Honor.

BY MR. SPENCER:

Q At some point, was the door opened?
A Yes.
Q What, if anything, did you say at that point?
A I told Mr. Dickerson, again identified myself, and told him we were investigating a bank robbery, and asked if I could come in and talk with him.
[7] Q What did he say?
A He allowed us in.
Q Did you ask him to do something at that point?
A Yes. We then asked him to accompany us to the FBI office in Washington.
THE COURT: Do you want to talk a little slower and into the microphone? You're talking a little too fast for me. Go ahead.
The door is opened. You asked to talk to him about a bank robbery. When you go into his house, is there a hallway or what?
THE WITNESS: Actually it's an apartment that we went into. It's an apartment contained in a house. We entered the vestibule of what was originally I would suspect a house and then were let into an apartment.
THE COURT: Was the apartment on the same floor as when you came in or a different floor?
THE WITNESS: Same floor.
THE COURT: Back?
THE WITNESS: Front, as you walk in the front door, on the ground level, left, front left.
THE COURT: Just a short walk into the apartment?
THE WITNESS: Yes.
THE COURT: Took you back into the apartment?
THE WITNESS: Yes.
[8] THE COURT: All right.
Go ahead.

BY MR. SPENCER:

Q You were let into the vestibule of the apartment; is that correct?

A Yes, into the front room.

Q In there, you asked him to go down to the station with you?

A Yes.

Q What, if anything, did he say to you?

A He asked if he could get a coat.

Q What did you say in response?

A Yes.

Q Where was he going to get the coat?

A He was going to get the coat from a back bedroom.

Q Did he tell you where the coat was located?

A He said it was in the bedroom.

Q Ad [sic] what did you say after he said that?

A We asked if we can go with him.

Q And what was his response to that?

A That we could.

Q Then what happened?

A We went to the back bedroom. He got a coat from the bed. When he lifted the coat up, we saw the money underneath the coat.

[9] Q Let me step you back for one minute. Why did you say you had to go back to the bedroom?

A For our safety, to make sure there weren't any other people in the house and so that he wouldn't have any access to weapons.

Q Can you describe for the Court when you say the money was there, what did you see?

A I saw a large amount of money laying on the bed, on the sheet of the bed, after he lifted the coat.

Q Coins or bills?

A Bills.

THE COURT: The coat was just laying on the bed, and underneath it was the money?

THE WITNESS: Yes, sir.

THE COURT: It was January, so it was a cold day, I assume; is that right?

THE WITNESS: Yes.

THE COURT: Okay.

BY MR. SPENCER:

Q How much money did that prove to be?

A $552.

THE COURT: When did you know it was 552?

THE WITNESS: We counted it when we got back to the office.

THE COURT: You took it with you?

[10] THE WITNESS: He took it with him. He put it in his pocket. When we got back to the office, we took the money.

THE COURT: When you got back to the FBI office, you then counted it there; is that right?

THE WITNESS: Yes.

THE COURT: Okay, all right.

BY MR. SPENCER:

Q When you counted it back at the FBI office, was that before or after he was arrested?

A Before.

Q What, if anything, did he say about that $552 while you were in the bedroom?

A He said it was money he got from gambling when he was in Atlantic City.

Q What did he do with the money while you were still in the bedroom?

A He put it in his pocket.

Q When you were in the apartment, Agent Lawlor, did you ask the defendant whether you could search the apartment?

A Yes.

Q What was his response?
A That we could not.
Q Did he accompany you then to the FBI office?
[11] A Yes, he did.
Q That's the Washington field office?
A Yes.
Q Was he under arrest?
A No.
Q Could he have declined to come with you?
A Yes.
Q Was he free to go?
A Yes.
Q Was he in restraints?
A No.
Q What time of day did you and the defendant get to the office?
A Probably in the area of 7 o'clock or after.
Q What was done with the defendant when you got there?
A We put him in the interview room and sat down and interviewed him.
Q How many people were in the room besides the defendant?
A Two, myself and a detective from Alexandria.
Q Was he under arrest at that point?
A No.
Q Did you make any threats or promises to the defendant?
[12] A No.
Q Did anyone make any threats or promises to him?
A No.
Q Did you touch him in any way, or did anyone else touch him?
A No.
Q Did you ask him questions about that point?
A Yes.

Q What, if anything, did he say about where he was on January 24th?
A He admitted that he had come to Alexandria to the Old Town area at about 10 o'clock in the morning, that he was driving his white Oldsmobile Sierra and that he was with, that he went there for purposes of looking at a restaurant. After looking at the restaurant, he went to get a bagel and described an area where he parked that was consistent with close to the bank that was robbed.
Q At that point, what did you do, Agent Lawlor?
A After the interview there, I went back, I went to a separate area of the building and got a search warrant, telephonically.
Q Search warrant for what?
A For the residence in Tacoma Park.
Q For the defendant's apartment?
A Yes.
[13] Q You said you got it telephonically?
A Yes.
Q How did you do that?
A I contacted Judge Kenkel in Maryland and described the facts of the case as we had them.
Q I'd like to send up, Your Honor, with the marshal's assistance.
THE COURT: Why did you contact the magistrate judge in Maryland, because that's where he was living?
THE WITNESS: Yes.

BY MR. SPENCER:

Q Would you take a look at Government Exhibit Number 2, please, Agent Lawlor.
Do you recognize that document?
A Yes, I do.
Q Do you recognize it by your signature?
A Yes.

Q Could you tell the Court what that is, please?
A It's the search warrant for 8313 Garland Avenue, Apartment 3, Tacoma Park.
Q That's the defendant's apartment?
A Yes.
THE COURT: Any objection to it for purposes of this hearing?
MR. McCARTHY: No, Your Honor.
[14] THE COURT: It's in.

BY MR. SPENCER:

Q Attached to that face sheet, there's a transcript?
A Yes.
Q What's that transcript of?
A My conversation with Judge Kenkel.
Q Have you read that transcript?
A Yes.
Q Is that accurate and complete?
A Yes.
Q And the warrant was authorized, Agent Lawlor?
A Yes, it was.
Q On the front, face sheet of the warrant, there's a section about the items to be seized or searched for. Who wrote the information in that section?
A I did.
Q Did you decide what words to put in there or did someone else decide?
A No, someone else did.
Q Who was that?
A The judge.
Q What did you do after you got the warrant?
A I notified agents who were in the area that we had a warrant, and I went back and told Mr. Dickerson that we were about to search his apartment.
[15] Q What reaction did the defendant have?
A Pardon me?

Q What was the defendant's reaction when you told him there was a warrant to search his apartment?
A He then decided that he wanted to talk to me again.
Q At that point, did you read the defendant his rights?
A Yes, I did.
Q Why did you read him his rigths then?
A Because it was apparent that he wanted to add some additional information, and I thought at that point he may becoming [sic] a suspect in a bank robbery.
Q Could you take a look please at what's been marked as Government Exhibit Number 1 for identification?
Do you recognize that docment?
A Yes.
Q Does your signature appear on there?
A Yes.
Q Could you tell the Court what it is, please?
A It's the Interrogation and Advice of Rights form, or a copy of it, that was signed by Mr. Dickerson.
Q Is that your standard Advice of Rights form from the FBI?
A Yes.
Q Did you read that form to the defendant?
[16] A Yes.
Q What did the defendant say or do in response?
A He indicated that he understood his rights and that he waived them.
Q He signed that document?
A Yes, he did.
A What time did that occur, the reading and the signing?
A It was signed at 9:41 p.m.
Q What, if any, promises or threats were made to the defendant to get him to sign that document?
A None.
Q Anyone touch or harm the defendant?
A No.

Q How was the defendant acting when he was advised of his rights?

A Coherent.

Q Did he appear intoxicated?

A No.

Q Did he appear alert?

A Yes.

Q Appear to understand?

A Yes.

Q Did he ask for a lawyer?

A No.

[17] Q Did he indicate that he didn't want to answer your questions?

A No.

MR. SPENCER: Your Honor, I'd offer Government Exhibit Number 1.

THE COURT: Any objection?

MR. McCARTHY: No, sir.

MR. SPENCER: Thank you, Your Honor.

BY MR. SPENCER:

Q Then you proceeded to ask the defendant some questions, Agent Lawlor?

A Yes.

Q What, if anything, did he say about the bank robbery?

A He admitted that on the morning of the 24th he was in Old Town, that he was driving his white Oldsmobile and that he was with a person that he knew as Jimmy.

Q What, if anything, did he say about what might be found in his apartment?

A He said that we might find some dye-stained money and a gun in his apartment.

THE COURT: He said what about the gun, say again.

THE WITNESS: He said we might find some dye-stained money and a gun in his apartment. He described the gun and where we would find it.

[18] BY MR. SPENCER:

Q What, if anything, did he tell you about when he answered the door that evening when you first knocked on the door?

A That's when he told me that he had the gun in his hand when he came to the door.

Q Were there cars impounded on January 27th of this year?

A Yes.

Q What cars were those?

A Cars belonging to Mr. Dickerson, a 1982 Chevy Caprice and a 1985 white Oldsmobile Sierra.

Q You said those belonged to Mr. Dickerson?

A Yes.

Q What was done with those cars?

A They were towed to the FBI office and sealed and later a search warrant was obtained.

Q When was that search warrant obtained, approximately?

A March of '97.

Q Please take a look at Government Exhibit Number 3.

Do you recognize that document?

A Yes.

Q How do you recognize it?

A By my signature.

[19] Q Tell the Court what that is, please.

A It is the face sheets for the search warrants, two search warrants, one for the Caprice, and one for the Sierra and the accompanying affidavit.

Q You obtained those from the magistrate judge in the District of Colmbia?

A Yes.

Q And the search warrants were granted?

A Yes.

Q And agents searched the cars?

A Yes.

Q What, if anything, was found in the 1982 Chevy Caprice?

A Nothing of value.

Q Nothing relevant to this case?

A Correct.

Q What, if anything, was found in the 1985 Oldsmobile Sierra?

A A receipt for the rental of a U-Haul truck, receipt for auto glass repair, a black leather back pack, a disposable camera, cleaner solvent. Referred to as M-1 Solvent, some rubber gloves, a coat.

Q To your knowledge, what is M-1 cleaner used for?

A It's just a general all-purpose removal.

Q Does it have any relevance for bank robbery?

[20] A Mr. Dickerson said that that's what he used to take dye stain off of bills.

MR. SPENCER: That's all I have right now, Your Honor.

THE COURT: Okay.

Let me ask you this. Did you count the money before getting the warrant?

THE WITNESS: Count the money that—

THE COURT: You counted it as soon as you got down to the office; is that correct?

THE WITNESS: Certainly afterwards, yes.

THE COURT: That was before you got the warrant, obviously?

THE WITNESS: Yes.

THE COURT: Thank you.

Go ahead.

CROSS-EXAMINATION.

BY MR. McCARTHY:

Q There essentially were two conversations with Mr. Dickerson at the field office, one before the search warrant for the home, and then the second one when he changed his version of the story?

A Yes.

Q With regard to the second set of statements by the defendant, how long did that take?

[21] A The entire process?

Q The second conversation. How much time did he spend talking to you and giving you additional or different—

A Maybe an hour or so. I don't recall exactly.

Q During that hour of conversation, he told you you might find dye-stained money and a gun?

A Yes.

Q Did he say anything else during that hour?

A Yes.

Q What else did he say?

A He told us what he knew about Jimmy, a person that we later identified as James Rochester, that they had been arrested together before; he described where Jimmy lived, what Jimmy had told him about robbing banks, among other things.

Q When you were on the telephone with the magistrate judge in Maryland, you got telephonic approval, were there other agents assisting you that night?

A Yes.

Q Other agents actually went to the home then after the magistrate judge gives telephonic approval?

A Yes.

Q You stayed at the field office?

A Yes.

[22] Q With the defendant?

A Yes.

Q After you get off of the phone, how long is it before you go back to the defendant and advise him we do have telephonic approval now for the search of your home?

A Matter of minutes.

Q That's when you begin this hour conversation, that's when that hour conversation—

A Yes. Actually I think shortly thereafter. It wasn't instantaneous with telling him but shortly after, a couple of minutes.

Q You were in a different room, of course. You had come into the room where he was.

A Yes.

Q You then disclosed to him we've got the telephonic approval?

A Right.

Q Then he immediately says he wants to change his mind and give you some new information?

A He didn't say that immediately. It was several minutes later.

Q Several minutes, okay.

And the second conversation during which he gives this additional information was something that he did for you only after you Mirandize him?

[23] A Yes.

Q Now, you're sure about that?

A Yes.

Q Okay. The conversation you had with the magistrate judge about the search of the home, you indicated in the transcript that you had seen this money 500 and some dollars, and you explained to the magistrate judge the citizen got the tag number and you were able to trace the Olds to the defendant.

The fact of the matter is, when you are talking to the magistrate judge to get the approval for the search warrant, you know that the $552 is no longer in the home you're seeking permission to search; don't you?

A Yes.

Q As a matter of fact, it's in the room with you in his pocket, the defendant's pocket; correct?

A Yes.

Q The fact of the matter is, when you were briefly in the home a few hours earlier that night, you saw no other evidence incriminating the defendant besides that $552?

A There was nothing in plain view.

Q So the answer to my question is, yes, that's right, you didn't see anything else?

MR. SPENCER: Your Honor, he has answered the question.

[24] THE COURT: Okay.

BY MR. McCARTHY:

Q Whether it was in plain view or not, I'm not sure whether you might have seen other things. Did you see anything else, whether in plain view or not?

A I saw nothing that I recognized immediately from the bank robbery.

Q There was nothing you gave to the magistrate beyond the $552 that's part of the tape and transcribed conversation as what you saw in the apartment?

A Correct.

Q Did the magistrate voice any concern about what it exactly was you would be looking for in the apartment?

A I don't think he voiced any concern.

Q You say that it was the magistrate's suggestion, evidence of bank robbery?

A [sic] Was there any discussion on or off the record in discussions with the magistrate judge about exactly what it is particularly would be sought?

A No.

Q Was any part of the conversation you had with the magistrate judge not part of the transcript of the conversation?

A Very briefly, when I first contacted him before the tape recorder was turned on, I wanted to let him know that a [25] tape recorder was going to be turned on.

Q The fact of the matter is, when you went back, or when the other agents went back, you had no idea what, if anything, they would find based on what you had originally seen when you went to the apartment yourself to meet the defendant?

A I had no way of knowing what they would find.

Q What I mean to say is, there was nothing in particular you expected to find there on the second trip back to the aparament that night based on what you had seen the first time around?

A The search warrant was for evidence for the crime of bank robbery.

Q And when you entered the apartment, your guns weren't drawn; were they?

A Mine wasn't.

Q Yours wasn't. Well, how many other gentlemen or law enforcement officers were you with?

A I think a total of four came into the apartment.

Q Did anybody have a weapon drawn?

A I didn't see any. I was the first one in.

Q Usually it would be the first one who would have his weapon drawn if anybody was going to have it drawn, isn't it; isn't that true?

A I couldn't say that's true.

[26] Q You didn't expect your colleagues to have their weapons drawn?

A I didn't expect one way or the other.

Q You didn't feel that you needed to have your weapon drawn?

A I didn't have it drawn.

Q I know you didn't have it drawn. I'm asking you didn't feel you needed to have it drawn; did you?

A Immediately, no.

Q When Mr. Dickerson indicates he has to go get his coat before he leaves with you, how many agents follow him into the bedroom?

A Myself and a detective.

Q Two agents?

A Two people.

Q Two officers?

A Two officers.

Q How many rooms do you travel through from the entranceway to the apartment to the bedroom where his coat is found?

A I don't know how you would break down the rooms, but we went through one threshold, one doorway, kind of a common living room/dining room area, and then the bedroom if I remember.

Q Would it be a distance comparable to where I'm [27] standing from you, closer, further?

A A little bit further, maybe from here to the wall.

Q 30 feet, is that fair, to estimate?

A That would be fair.

Q You followed him into the bedroom?

A Yes.

Q The other agent did also?

A Officer.

Q Nobody asked for permission from him to follow him into the room. You just simply announced we're going to follow you?

A I said we need to, and he didn't protest.

Q The fact of the matter is, whether he protested or not, you would have followed him?

A That's not true.

Q If he had protested, you would not have followed?

A Correct.

Q He was free to leave at that time?

A Yes.

Q Now, in your conversation with the defendant in order to have him come to the field office with you, did you make any suggestions of consequences if he didn't cooperate or didn't accompany you?

A No.

Q Did anyone else? When I say you, I mean you [28] generically in terms of any law enforcement officer there.

A I didn't hear any.

Q Were you all present together at all times?

A No.

Q So other officers could have said things to him out of your hearing?

A I was with Mr. Dickerson, but I wasn't with all the officers at all times.

Q Were you with Mr. Dickerson at all times?

A Yes, until we got to the field office.

MR. McCARTHY: Okay.

Thank you. That's all I have of the gentleman.

THE COURT: Let me ask. Agent Lawlor, what did you take the phrase "Evidence of crimes of bank robberies" used in the warrant to mean? What did you consider that to be?

THE WITNESS: Generally money, guns, clothing, records.

THE COURT: Okay. Did you, in fact, specify to the magistrate what you were seeking? Did you tell him you wanted to get guns, money, evidence, clothing.

THE WITNESS: No.

THE COURT: You didn't specify?

THE WITNESS: I don't think I specifically listed out what we were searching for.

THE COURT: Did you know the serial numbers of the [29] bank, were marked or unmarked, or anything like that.

THE WITNESS: I don't recall. I'm trying to recall if that bank gave out bate money or not, but generally banks do give out bate money during bank robberies.

THE COURT: They also give out a dye pack in a separate—

THE WITNESS: Some banks do, some don't.

THE COURT: There was a dye pack in this case or not?

THE WITNESS: No, there was no dye pack in this case.

THE COURT: Okay.

Any other questions?

MR. SPENCER: I have a question.

THE COURT: Go ahead.

REDIRECT EXAMINATION

BY MR. SPENCER:

Q How many bank robberies were you investigating at that point on January 27th?

A One.

Q During the course of the evening discussing things with Mr. Dickerson that night, did you become aware that he was allegedly involved in another bank robbery earlier in time than the January 24th?

A Yes.

[30] THE COURT: What bank was that? What bank was the other bank?

THE WITNESS: A bank in Maryland.

BY MR. SPENCER:

Q When was that?

A The bank robbery or when did I become aware of another bank robbery.

Q When did the bank robbery occur?
A I believe it was September of '96. I'm not sure.
Q Did you, in fact, recover any bate bills from the defendant's apartment?
A Yes.
Q To what bank robbery were those?
A A Maryland bank robbery.
Q The same one you just told us about or a different one?
A Same one.
MR. McCARTHY: If the Court please, I'd object to it as really not relevant to any of the issues, because it's not been relied on by any of the magistrate judges.
THE COURT: Sustained.
MR. SPENCER: Your Honor, I think to the extent you were talking about evidence he was seeking for, what evidence is evidence of crime of a bank robbery.
THE COURT: Go ahead. I'll allow it briefly.
[31] Go ahead.

BY MR. SPENCER:

Q You said you recovered a bate bill?
A Yes.
Q What bank robbery did that go to?
A Maryland bank robbery.
Q Did you recover dye-stained money?
A Yes.
Q Have you been investigating Mr. Dickerson for bank robbery or robberies that relate to a bank where a dye pack was taken?
A Yes.
Q How many bank robberies?
A At least seven that I know of now.
MR. SPENCER: That's all I have, Your Honor.

RECROSS EXAMINATION

BY MR. McCARTHY:

Q If the Court please, just one question.
None of that was communicated to the magistrate judge who authorized the search of the home in Tacoma Park, correct?
A Correct.
Q That was all discovered after the fact?
A Yes.
MR. McCARTHY: Thank you, Your Honor.
[32] THE COURT: You may step down, sir.

(Witness steps aside.)

THE COURT: Any other evidence the government wants to offer?
MR. SPENCER: No, Your Honor.
MR. McCARTHY: Put Mr. Dickerson on the stand, if the Court please.

(Defendant sworn.).

THE COURT: Okay.

DIRECT EXAMINATION

BY MR. McCARTHY:

Q Would you please state your full name for His Honor.
A Charles Thomas Dickerson.
Q Mr. Dickerson, I want to draw your attention to the evening, approximately 5 to 7 p.m. on 27 January, that Monday when the agent testified he came to your home. You answered the door and allowed him into your home?
A No, I didn't.

Q Did you answer the door?
A Yes, I did.
Q When you answered the door, what happened?
A I told him hold up, that I need to put some pants on.
THE COURT: Speak into that microphone.
[33] What did you tell him?
THE WITNESS: I told him hold on, I had to put some pants on because I just got out of the tub.
MR. McCARTHY: All right.
THE WITNESS: That's when I left the door.
THE COURT: You said you had just gotten out of the tub?
THE WITNESS: Yes, I had to put some pants on.

BY MR. McCARTHY:

Q Was the door open when you said that?
A No.
Q After you put your trousers on, did you open the front door?
A Yes, I did.
Q What happened next?
A Opened the door, it was Agent Lawlor, another agent, and it was probably like at least 10 to 15 men within that door threshold right there, all with their guns drawn.
Q Did you say there were 10 to 15?
A Yes.
Q Did any of them come into your home?
A Yes, they did. I told them to hold up, I had to go hang my phone up, and I turned around and they was there behind me.
THE COURT: Take a little slower now.
[34] All of them came into your home?
THE WITNESS: No. Agent Lawlor, another agent, and I think one other one came in.

THE COURT: So three came in?
THE WITNESS: Yes.
THE COURT: Three agents came in.
THE WITNESS: That I saw.

BY MR. McCARTHY:

Q Did you invite them in?
A No, I didn't.
Q What did you tell them about coming into your home?
A I told them to hold up, I had to go hang my phone up because I was on the phone.
Q Where was your phone?
A My phone was in my bedroom.
Q How far is your bedroom from the front door of your apartment, using anything in this room?
A About from here to that wall, as Agent Lawlor stated.
Q About 30 feet?
A Yes.
Q Did you walk from your front door then that 30 feet to your bedroom?
A Yes.
Q Was your back turned to the agents?
[35] A Yes, it was.
Q Did you realize they were following you?
A No, I didn't.
Q When you got to your bedroom, did you discover them right behind you?
A Yes, I did.
Q Did they ever ask permission to follow you into your bedroom?
A No.
Q Did you want them to follow you into your bedroom?
A No, I didn't.

Q Did you want them in your home?

A No, I didn't.

Q Did they ever give you any indication that you protesting them coming into your home would do you any good?

A No.

Q What was the attitude they had inside your home in terms of them being there and not leaving, what did they communicate to you, if anything?

A It was more they came to ask me questions about a bank robbery. I mean, just, it's like we're here and we want to know what you know about it.

Q When you went into your bedroom, did you get your coat?

A Yes, I did.

[36] Q Did you feel you had a choice about going to the field office with them?

A Not really.

Q Why not?

A Because so many people. I asked the agent, I said, you all came to ask me questions, why did you bring so many people. He stated that it was another office close by, and all of them just came.

Q All right. When you went to the station, the officer described two different discussions you had. Let me direct your attention to the second discussion.

A Okay.

Q You had a chance to see the rights waiver Miranda form that I showed you while they were talking on direct, do you recognize that as something they showed you and had you sign?

A They didn't—no, not at first, they didn't show me that.

Q I'm not asking you when it was signed. I'm just asking do you recognize that's what they showed you, and that's what you signed; isn't it?

A Yes.

Q Was that at the end of the second discussion you had or was that before the beginning of the second discussion?

[37] A It was at the end of the second discussion.

Q Was that the last thing that was done during your meetings with them before you were arrested?

A Yes, it was.

Q Were you arrested that night?

A Yes, I was.

Q Did you know before you made any statements to any law enforcement officer that you did have a right to remain silent and you didn't have to talk to them?

A No.

Q Did you feel that you had a choice in talking with them?

A No, I didn't have a choice.

Q What was your reaction when the agent told you, we've got a search warrant for your home now and we're going to search?

A I said you can search as long as I'm there because I had been there for at least four hours by myself.

THE COURT: Excuse me one minute.

When they told you they had a search warrant, had you signed the Advice of Rights form yet?

THE WITNESS: No; no, I didn't.

THE COURT: You signed it after they told you they were going to search; is that right?

THE WITNESS: No; it's still some time after that, [38] Judge.

THE COURT: Long or after that.

THE WITNESS: It was at least a half hour after.

THE COURT: During that half-hour period. Did you make statements to them?

THE WITNESS: We was still talking about the bank robbery.

THE COURT: At First Virginia.
Did you mention Jimmy during that conversation?
THE WITNESS: No, I didn't.
THE COURT: Go ahead.

BY MR. McCARTHY:

Q From the time he told you I have a search warrant for your house now until the time he gave you the rights waiver form and went through it with you and had you sign it, that period between being told about the search warrant and signing the rights waiver form, is that the period of time during which you had that second conversation before signing the rights waiver?

A Yes.

MR. SPENCER: Your Honor, that's the question you just asked him, I believe. Counsel didn't like the answer he got.

THE COURT: I'll let him answer.

BY MR. McCARTHY:

[39] Q You can answer the question.

A Yes.

Q After you signed the rights waiver form, did you make any other statements about any bank robberies or Jimmy or anybody else?

A No.

MR. McCARTHY: Your Honor. that's all I have for the gentleman.

Thank you.

THE COURT: Okay.

CROSS-EXAMINATION

BY MR. SPENCER:

Q Good afternoon, Mr. Dickerson.

A Good afternoon.

Q Now, on January 27th, the FBI came to your apartment, correct?

A Surely did.

Q They knocked on the door?

A Yes.

Q They announced they were from the FBI?

A Yes.

Q You said hold on a minute?

A Yes.

Q At that point you had come to the door with a gun in your hand; hadn't you?

[40] A No, I did not.

Q Well, later that night you told the agents that when you said hold on a minute, you had come to the door with a gun in your hand?

A I did not say that.

MR. McCARTHY: I'd object to the relevance on the question.

THE COURT: It came in earlier. I'm going to overrule you.

Go ahead.

BY MR. SPENCER:

Q Later that night, you told the FBI when you said hold on a minute you had come to the door with a gun in your hand?

A No, I did not.

Q You never said that to the FBI?

A I don't recall saying that to the agent.

Q You don't recall or you never said it?

A I never said it.

Q Let me read to you what Agent Lawlor has written down about your conversation with him on that subject.

"Dickerson said that he came to the door when agents initially knocked at his door with a pistol in his hand.

Dickerson decided to hide the gun prior to opening the door for the agents."

[41] A I did not say that.

MR. McCARTHY: Your Honor, asked and answered.

BY MR. SPENCER:

Q Your testimony here today is that when Agent Lawlor wrote that down he was making it up?

MR. McCARTHY: Agumentative and asked and answered.

THE WITNESS: I guess so.

THE COURT: Did that happen or not happen?

THE WITNESS: It did not happen. I didn't have a gun in my hand.

BY MR. SPENCER:

Q You opened the door?

A Yes, I did.

Q And the FBI asked whether they could come in, correct?

A I don't think they did.

Q You said yes, you let them in the front door?

A No, I did not.

Q There were three agents who came in, you said?

A No. They were still in front of the front door. My door, it didn't shut all the way. I told them hold up, I had to hang my phone up. I never invited them in.

Q How many agents came in?

A To my knowledge, I think it was three that was in [42] the bedroom with me. I couldn't tell you who was in the living room.

Q They asked you to come down to the FBI field office and answer some questions about a bank robbery, right?

A No. They asked me did I know anything about a bank robbery.

Q They asked you to come down to the field office and answer some questions about a bank robbery; didn't they?

A Yes.

Q You said you would?

A Yes, I did.

Q You said you wanted to go get your coat?

A At that time they was already in the room, they was already asking those questions.

Q They said they were going to have to come back to the bedroom.

A No, they never said that. They was in the bedroom.

Q They never said anything to you about going down to the field office until they were all the way down to your bedroom; is that your testimony?

A Yes, it is.

Q You lifted the coat off the bed; didn't you?

A Yes, I did.

Q When you lifted it off the bed, lying on the bed was this pile of bills?

[43] A Yes, it was.

Q That was $552, right?

A Yes, it was

Q You said you won it gambling?

A Yes, I did.

Q You put it in your pocket?

A I counted it in front of the officers. Then I put it in my pocket.

Q You counted it out, $552, right there in your bedroom in front of them?

A Yes, I did, because it was five $100 bills, that's why it was so easy to count. It was two $1 bills, I can't remember.

THE COURT: Talk a little slower now

Go ahead.

THE WITNESS: It was five $100 bills; that's why I counted it. Because as soon as I lifted my coat up, all of them said, oh, where did you get this. I said I just won it at Atlantic City. That's when I counted the money, because like they tried, you know, try to charge me without even questioning me.

BY MR. SPENCER:

Q You counted it out right in front of them?
A Yes, I did.
Q Then you put it in your pocket?
[44] A Yes, I did.
Q And then you went with them down to the FBI field office?
A Yes, I did.
Q On the way out of the apartment, though, they asked you whether they could search your apartment?
A Yes, they did.
Q You refused.
A Yes, I did.
Q You said no?
A True.
Q You know you could decline to have your apartment searched; didn't you?
A Yes, I did.
Q You didn't want your apartment searched by them; did you?
A I have already answered that question.
Q You have to answer it again, Mr. Dickerson.
A Yes, I did.
Q You didn't want them to search the apartment; did you?

MR. McCARTHY: Asked and answered, Your Honor.

THE COURT: Sustained.

BY MR. SPENCER:

Q You went down to the FBI field office, didn't you, [45] Mr. Dickerson?
A Same question, yes.
Q You went down to the FBI field office; didn't you?
A Yes.
Q Then they asked you some questions about the bank robbery?
A Yes, they did.
Q About the bank robbery that occurred on January 24th in Alexandria?
A Okay, yes.
Q They didn't threaten you in any way?
A No.
Q They didn't touch you?
A No.
Q They didn't make you any promises?
A No, they didn't.
Q You admitted you were in Alexandria on the morning of January 24th?
A Yes, I did.
Q In your Oldsmobile Sierra, correct?
A Yes, I did.
Q With D.C. dealer plates.

MR. McCARTHY: Your Honor, object to the content of the statement. The content is not relevant. The question is whether the statement, whatever the content, was given [46] freely and voluntarily.

THE COURT: I think he is checking to see whether he refutes it.

Did you refute anything about the statement that Mr. Lawlor said that you made?

THE WITNESS: Not so far, not about going to the station, no.

THE COURT: Okay.

BY MR. SPENCER:

Q Then you lied about the reason you were down there in Alexandria that day.

A I did not.

MR. McCARTHY: If the Court please, whether he refutes it or not isn't even important. Whether it's truthful or not isn't important. The question today is whether or not the government conduct was permissible under the Constitution, not the truth or veracity of any statement.

THE COURT: Okay.

MR. SPENCER: Your Honor, he is up here testifying, directly contradicting what an FBI agent has said.

THE COURT: I think it does go to credibility, so I'm going to overrule the objection.

Go ahead.

MR. SPENCER: Thank you, Your Honor.

[47] BY MR. SPENCER:

Q You lied about the reason you were in Alexandria about January 24th; didn't you?

A No, I didn't.

Q You gave two different versions to the agent that night; didn't you?

A If that's the way you want to state it, but that's not the way I said it. I told him in the beginning that I was looking for a restaurant, I was still looking for a restaurant. I just didn't tell him who was in my car with me. I told him that I was in Alexandria looking for a restaurant.

Q The first time you gave the story, you told about meeting a man named Terrence down there; didn't you?

A Yes.

Q That was a lie; wasn't it?

A No. Terrence was down there.

Q Then the second time you talked about being down there with Jimmy?

A It's the same story.

Q The first time you told about looking for restaurant for someone name Sulky.

A Yes, Soaky.

Q That's a lie; isn't it?

A No, it's not.

[48] Q Then you told about giving Terrence a ride back to Maryland?

A Yes.

Q That's a lie; isn't it?

A No, it's not.

Q And then you told about going to a house, a girl named Missy, and that's not true; is it?

A No, that is true.

Q The first time you gave Agent Lawlor the story, you never said anything about Jimmy; did you?

A No, I didn't.

Q You were just leaving that out; weren't you?

A I didn't know I had an option to talk about him. We wasn't talking about Jimmy. We was talking about a bank robbery.

Q You said the second time that you thought Jimmy was the bank robber.

A That's when they showed me a picture of Jimmy. That's when I started that. Other than that, I didn't know why I was there. I though I had saw something, that's [sic] that's why I was there.

Q The second time you gave the story to Agent Lawlor, you said that you thought Jimmy might have robbed a bank that morning?

A Yes.

[49] Q That's something you didn't say the first time you gave the story; did you?

A Because the first time I gave the story, Jimmy was not in the story.

Q You didn't say it the first time you gave the story; did you?

A I repeat my statement just now.

Q You didn't say it the first time; did you?

A The first time I gave the story, Jimmy was not in the story.

Q Right. You left Jimmy out the first time; didn't you?

A Jimmy wasn't in the story. They didn't show me the picture of Jimmy.

Q Mr. Dickerson, you left him out the first time; didn't you?

A No.

Q Now, Mr. Dickerson, your rights form was read to you that night; wasn't it?

A Yes, it was.

Q And you signed it; didn't you?

A Yes, I did.

Q That advised you of all your rights?

A Yes, it did.

Q You agreed to talk to them. You waived your right [50] not to answer questions; didn't you?

A At what time?

Q That night. You signed that form; didn't you?

A I didn't sign the form until I was about to leave.

Q You signed the form that night; didn't you?

A Yes, I did.

Q They didn't threaten you or make you any promises to get you to sign that form; did they?

A Yes. they did threaten me.

THE COURT: You say they threatened you?

THE WITNESS: Yes.

THE COURT: When?

THE WITNESS: Not this officer but the other one. It was more of a forceful, why don't you go ahead and confess, confess. The judge will go easy on you, confess, that's all they kept saying to me. We know you did it, confess to it.

BY MR. SPENCER:

Q They didn't make you any promises; did they?

A No, they didn't.

Q You have been arrested before; haven't you?

A Yes, I have.

Q In fact, on September 27th of last year, you were arrested in Montgomery County, Maryland, for bank robbery.

THE COURT: Sustained as to the arrest. If it's [51] convictions, I will hear it, but not arrest.

MR. SPENCER: Your Honor, he claims he didn't know he had a right to decline to answer questions or he could have a lawyer present. One of the things that's relevant to that is whether he had ever been Mirandized before or whether he has been through the criminal justice system before. That is relevant to this understanding.

THE COURT: Was he convicted?

MR. SPENCER: He was not convicted.

THE COURT: Let me ask you. Was it thrown out for a motion to suppress or what, nol prossed or what?

MR. SPENCER: I believe it was nol prossed, Your Honor.

THE COURT: Do you know why?

MR. SPENCER: I do not.

THE COURT: You say he was Mirandized on that occasion?

MR. SPENCER: That's correct.

THE COURT: Let me ask, were you ever given Miranda rights before this case?

THE WITNESS: I can't recall, Judge. However, I did ask did I need a lawyer and they said I didn't because I wasn't under arrest.

BY MR. SPENCER:

Q You have had your rights read to you before [52] September 27, 1996; didn't you?

A I cannot recall.

Q After you signed the statement, it was after the agents had said to you that they had a search warrant for your apartment in Maryland, correct?

A No.

Q Let me get this straight. The agent told you they got a search warrant for your apartment in Maryland, correct?

A True.

Q And after that, after they told you that, you signed the rights waiver form, correct?

A After that, yes.

Q After that, you told them, oh, you might find a gun in the apartment?

A No, I did not.

Q You did not tell them that?

A No, I did not.

Q So, when Agent Lawlor put that in his report, that's another thing he is lying about?

A Agent Lawlor had a beeper. He had told me what he found in my apartment. He said, Mr. Dickerson, you have some money in your apartment. I said, yes, I have some $1 bills. He said what about a $20 bate bill? I said somebody owed me some money. I guess if that's what you found, I [53] guess that could be it. Then he said, well, I also found a 45 gun. I said, well, that was in my closet. It was already stated to me.

Q When Agent Lawlor writes in his report of this interview with you, "Dickerson said that when FBI agents searched his home, they would likely find dye-stained money and a silver colored 45 pistol." You never said that to Agent Lawlor?

A I said that after they had already told me.

Q In fact, that was true, that there was a silver colored 45 in your apartment and there was dye-stained money in your apartment?

MR. McCARTHY: Your Honor, objection to that.

THE COURT: What basis?

MR. McCARTHY: We're not here to test the truth or veracity of what the police say they found in the apartment.

THE COURT: All right.

MR. SPENCER: Your Honor, we are, though, here to impeach the truth and veracity of what this defendant—

THE COURT: I'll let him answer this, and then let's move along with it.

BY MR. SPENCER:

Q It was true, a silver colored 45 was in your apartment; wasn't it?

A Yes, it was.

[54] Q That was a gun you got from Jimmy Rochester; wasn't it?

MR. McCARTHY: Your Honor, I object to that.

THE COURT: Sustained as to that.

BY MR. SPENCER:

Q After you admitted these things to the police, that's when you were arrested; isn't that right?

A No.

Q When were you arrested that evening?

A I was arrested after I showed them where Jimmy Rochester lived at.

MR. SPENCER: That's all I have, Your Honor.

THE COURT: You may step down.

(Witness steps aside.)

[Filed July 11, 1997]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)

[Caption Omitted in Printing]

DEFENDANT'S MOTION TO SUPPRESS

COMES NOW the Defendant, Charles Dickerson, through his counsel, and moves this Honorable Court to suppress the testimony of James Rochester and exclude him as a witness in this case. As grounds in support thereof, the Defendant states as follows:

1. On July 1, 1997, the Honorable James C. Cacheris issued an Order together with a Memorandum Opinion granting in part and denying in part the Defendant's Motion to Suppress. The Court granted the motion as to the Defendant's statements offered at the FBI Field Office on January 27, 1997, and as to items discovered during a search of the Defendant's home that evening. The Court denied the motion as to the search of the Defendant's Oldsmobile Ciera on March 28, 1997.

2. The Court suppressed the Defendant's statement given at the FBI Field Office on the grounds that the Defendant was under arrest at the time he was removed from his home by armed FBI agents and driven to the Field Office, and that, once at the Field Office, the Defendant was not properly advised of his *Miranda* rights until after he had completed his statement to the agents.

3. The arrest of Mr. Dickerson on the evening of January 27, 1997, was in violation of Mr. Dickerson's Fourth

Amendment rights because it was not supported by probable cause. During this unconstitutional seizure of his person, Mr. Dickerson gave the aforementioned statement. Prior to obtaining this statement, the Government did not know the identity or whereabouts of James Rochester.

4. Any and all information obtained by the Government from James Rochester was tainted by the Government's unlawful arrest of Mr. Dickerson. Without Mr. Dickerson's statement, the Government never could have located James Rochester or developed him as a witness against Mr. Dickerson. James Rochester's admissions to the police incriminating Mr. Dickerson in the bank robberies and related charges pending before this Court are tainted by the unlawful arrest of Mr. Dickerson and should be excluded as "fruit of the poisonous tree." *Wong Sun v. United States*, 371 U.S. 471 (1963).

WHEREFORE, the Defendant requests that this Honorable Court suppress the testimony of James Rochester and exclude him as a witness in this case.

Respectfully submitted,

CHARLES THOMAS DICKERSON
By Counsel

/s/ James W. Hundley
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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)

[Caption Omitted in Printing]

MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO SUPPRESS

In *Wong Sun v. United States*, 371 U.S. 471 (1963), the Supreme Court articulated the "fruit of the poisonous tree" doctrine. According to *Wong Sun*, derivative evidence, such as physical evidence, a confession, or *the testimony of a witness*, must be suppressed if it was discovered by exploiting a search or seizure violative of the Fourth Amendment. The "tainted fruits" analysis applies when a defendant's constitutional rights have been infringed. *See Oregon v. Elstad*, 470 U.S. 298, 305 (1985).

In the recent case of *United States v. Elie*, —— F.3d ——, (4th Cir. April 24, 1997), the Fourth Circuit ruled that the poisonous fruits doctrine did not apply to derivative evidence discovered as a result of statements taken in violation of *Miranda*. However, the Court continued its adherence to the rule that evidence discovered as a result of a constitutional violation is tainted and inadmissible.

In the case at bar, the FBI violated Mr. Dickerson's right to be free from unlawful seizure when they arrested him at his home without probable cause to believe he had committed a crime. Indeed, the position of the Government at the initial suppression hearing was that they did

not intend to arrest Mr. Dickerson. Rather, they only wished for him to consensually accompany them to the FBI Field Office and voluntarily answer questions concerning the bank robbery they were investigating. The Government took this position because at the time the FBI first confronted Mr. Dickerson at his home, it was clear they did not have probable cause to arrest him. The only information they had was that Mr. Dickerson's automobile had been seen in the vicinity of a bank robbery. They had no evidence placing Mr. Dickerson at the scene of the crime or linking him to the robbery in any way.

The Court has already ruled that the FBI arrested Mr. Dickerson when they took him from his home and drove him to the FBI Field Office. This arrest was unconstitutional. During the course of this unlawful seizure, Mr. Dickerson gave the police an unmirandized statement in which James Rochester was identified for the first time. Mr. Dickerson told the agents James Rochester's name and where he resided. Prior to obtaining this statement, the FBI did not have any other evidence which could have led them to James Rochester.

Not only was this statement obtained in violation of *Miranda*, it was tainted by the unconstitutional nature of Mr. Dickerson's arrest. The FBI used Mr. Dickerson's unlawful arrest in a manner that led them directly to James Rochester. No source independent of Mr. Dickerson identified James Rochester as a witness in this case. But for the unlawful arrest of Mr. Dickerson, the FBI would not have located James Rochester. He became a witness only through the unattenuated exploitation of Mr. Dickerson's unconstitutional arrest.[1]

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1 Courth have recognized three limitations to the "fruit of the poisonous tree" doctrine: (1) evidence attributed to an independent source; (2) evidence where the connection has become so attenuated as to dissipate the taint; and (3) evidence which inevitably would have been gained even with the unlawful action. *See Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 392 (1920); *Nardone v. United States*, 308 U.S. 338, 341 (1939); *Nix v. Williams*, 467 U.S. 431, 448 (1984); Annot., "Evidence—Fruit of Poisonous Tree," 43 A.L.R.3d 385, 398-406, §§ 6-9 (1972). None of the limitations are applicable to this case.

Accordingly, any testimony presented against Mr. Dickerson by James Rochester is the tained fruit of Mr. Dickerson's unlawful arrest. James Rochester should, therefore, be excluded as a witness in this case.

Respectfully submitted,

CHARLES THOMAS DICKERSON
By Counsel

/s/ James W. Hundley
JAMES W. HUNDLEY
BRIGLIA & HUNDLEY, P.C.

[Certificate of Service Omitted]

[Filed July 11, 1997]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)

[Caption Omitted in Printing]

DEFENDANT'S MOTION TO RECONSIDER

COMES NOW the Defendant, Charles Dickerson, through his counsel, and moves this Honorable Court to reconsider that portion of its Order denying the Defendant's Motion to Suppress that pertains to evidence found during a search of the Defendant's automobile. As grounds in support thereof, the Defendant states as follows:

1. On July 1, 1997, the Honorable James C. Cacheris issued an Order together with a Memorandum Opinion granting in part and denying in part the Defendant's Motion to Suppress. The Court granted the motion as to the Defendant's statements offered at the FBI Field Office on January 27, 1997, and as to items discovered during a search of the Defendant's home that evening. The Court denied the motion as to the search of the Defendant s Oldsmobile Ciera on March 28, 1997.

2. The Court declined to suppress the evidence in the Ciera on the grounds that probable cause existed to search based on admissions of James Rochester and testimony from witnesses who identified the car.

3. The Court suppressed the Defendant's statement given at the FBI Field Office on the grounds that the Defendant was under arrest at the time he was removed from his home by armed FBI agents and driven to the

Field Office, and that, once at the Field Office, the Defendant was not properly advised of his *Miranda* rights until after he had completed his statement to the agents.

4. The arrest of Mr. Dickerson on the evening of January 27, 1997, was in violation of Mr. Dickerson's Fourth Amendment rights because it was not supported by probable cause. During this unconstitutional seizure of his person, Mr. Dickerson gave the aforementioned statement. Prior to obtaining this statement, the Government did not know the identity or whereabouts of James Rochester.

5. Any and all information obtained by the Government from James Rochester was tainted by the Government's unlawful arrest of Mr. Dickerson. Without Mr. Dickerson's statement, the Government never could have obtained the information from James Rochester needed to establish probable cause to search the Ciera. James Rochester's statements regarding the contents of the Ciera are therefore "fruit of the poisonous tree."

6. Likewise, all evidence seized during the search of the Ciera is tainted by Mr. Dickerson's unlawful arrest. It too is fruit of the poisonous tree and should be suppressed. *Wong Sun v. United States,* 371 U.S. 471 (1963).

WHEREFORE, the Defendant requests that this Honorable Court reconsider its ruling and grant the Defendant's Motion to Suppress evidence obtained from the search of the Oldsmobile Ciera.

Respectfully submitted,

CHARLES THOMAS DICKERSON
By Counsel

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)

[Caption Omitted in Printing]

MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO RECONSIDER

In *Wong Sun v. United States*, 371 U.S. 471 (1963), the Supreme Court articulated the "fruit of the poisonous tree" doctrine. According to *Wong Sun*, derivative evidence, such as physical evidence, a confession, or the testimony of a witness, must be suppressed if it was discovered by exploiting a search or seizure violative of the Fourth Amendment. The "tainted fruits" analysis applies when a defendant's constitutional rights have been infringed. *See Oregon v. Elstad*, 470 U.S. 298, 305 (1985).

In the recent case of *United States v. Elie*, — F.3d —, (4th Cir. April 24, 1997), the Fourth Circuit ruled that the poisonous fruits doctrine did not apply to derivative evidence discovered as a result of statements taken in violation of *Miranda*. However, the Court continued its adherence to the rule that evidence discovered as a result of a constitutional violation is tainted and inadmissible.

In the case at bar, the FBI violated Mr. Dickerson's right to be free from unlawful seizure when they arrested him at his home without probable cause to believe he had committed a crime. Indeed, the position of the Government at the initial suppression hearing was that they did not intend to arrest Mr. Dickerson. Rather, they only wished for him to consensually accompany them to

the FBI Field Office and voluntarily answer questions concerning the bank robbery they were investigating. The Government took this position because at the time the FBI first confronted Mr. Dickerson at his home, it was clear they did not have probable cause to arrest him. The only information they had was that Mr. Dickerson's automobile had been seen in the vicinity of a bank robbery. They had no evidence placing Mr. Dickerson at the scene of the crime or linking him to the robbery in any way.

The Court has already ruled that the FBI arrested Mr. Dickerson when they took him from his home and drove him to the FBI Field Office. This arrest was unconstitutional. During the course of his unlawful seizure, Mr. Dickerson gave the police an unmirandized statement in which James Rochester was identified for the first time. Mr. Dickerson told the agents James Rochester's name and where he resided. Prior to obtaining this statement, the FBI did not have any other evidence which could have led them to James Rochester.

Not only was this statement obtained in violation of *Miranda*, it was tainted by the unconstitutional nature of Mr. Dickerson's arrest. The FBI used Mr. Dickerson's unlawful arrest in a manner that led them directly to James Rochester. No source independent of Mr. Dickerson identified James Rochester as a witness in this case. But for the unlawful arrest of Mr. Dickerson, the FBI would not have located James Rochester. He became a witness only through the unattenuated exploitation of Mr. Dickerson's unconstitutional arrest.[1]

---

1 Courts have recognized three limitations to the "fruit of the poisonous tree" doctrine: (1) evidence attributed to an independent source; (2) evidence where the connection has become so attenuated as to dissipate the taint; and (3) evidence which inevitably would have been gained even with the unlawful action. *See Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 392 (1920); *Nardone v. United States*, 308 U.S. 338, 341 (1939); *Nix v. Williams*, 467 U.S. 431, 448 (1984); Annot., "Evidence—Fruit of Poisonous Tree," 43 A.L.R.3d 385, 398-406, §§ 6-9 (1972). None of the limitations are applicable to this case.

After locating James Rochester, the Government obtained admissions from him that evidence from the bank robbery was in Mr. Dickerson's Oldsmobile Ciera. This statement is tainted and, like Mr. Dickerson's own statement, cannot be used to support the search of the Ciera. Without this evidence, the Government is left only with the statements of witnesses obtained on the day of the robbery. The Ciera was confiscated by the FBI three days after the robbery. The witness statements are therefore too stale and unparticularized to provide probable cause to search the automobile.

In conclusion, the Government lacked sufficient, constitutionally obtained evidence to support the execution of the search warrant for the Ciera. Any evidence found as a result of this search should, therefore, be suppressed.

Respectfully submitted,

CHARLES THOMAS DICKERSON
By Counsel

/s/ James W. Hundley
JAMES W. HUNDLEY
BRIGLIA & HUNDLEY, P.C.

[Certificate of Service Omitted]

[Filed July 15, 1997]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

[Caption Omitted in Printing]

GOVERNMENT'S MOTION FOR RECONSIDERATION

The United States moves for reconsideration of the Court's Memorandum Opinion and Order filed July 1, 1997. At the outset, we recognize that the Court disfavors motions for reconsideration. This motion, however, is unique because, putting the merits aside, the Court's Opinion expressly accuses an FBI Agent of giving untrue testimony—a grave accusation that, with all respect, we believe is unsupported by the extant record and that certainly is contradicted by the newly presented evidence attached to this pleading. At stake here is not only our ability to bring Dickerson to book for multiple armed robberies, but also quite possibly an agent's career.

We ask the Court to reverse its decision suppressing Dickerson's statements and the evidence seized in the search of his apartment. The suppressed evidence implicates Dickerson in multiple bank robberies and an armed car-jacking during which a gun was taken that later was used to murder an off-duty correctional officer. As the attached affidavit of FBI Agent Lawrence Wenko reflects, the experienced agent in charge of executing the search knew exactly what to look for, conducted a reasonably limited search, and seized only evidence of the type specified in the warrant, namely, evidence of bank robbery.[1] Even if the warrant lacked particularity, there is no reason to doubt that the agents conducted the search in good-faith reliance on the warrant's validity.

Likewise, the record supplemented by the attached affidavits shows that Dickerson was not in custody for *Miranda* purposes and that his incriminating statements were elicited after he was given *Miranda* warnings. At all events, since there is no evidence or even serious allegation that Dickerson's statements were involuntary, the statements are admissible under 18 U.S.C. 3501(a), which provides that "in any criminal prosecution brought by the United States . . . a confession *shall be admissible* if it is voluntarily given" (emphasis added).

We also ask the Court to reconsider and modify its comments accusing FBI Agent Christopher Lawlor of giving untruthful testimony. As the Court is aware, judicial findings that an FBI agent has given untruthful testimony have very serious consequences, including preventing the agent from being an effective witness in future cases. That in turn could have adverse consequences for his career, and trigger DOJ and FBI Office of Professional Responsibility investigations. Accordingly, such accusations should be made only when grounded in the most compelling evidence. As we show below, there is no such evidence here, nor, indeed, any persuasive reason to conclude that Agent Lawlor was untruthful either in his testimony at the suppression hearing or in his representations to the magistrate judge.

A. Agent Lawlor's Truthfulness

The Court's Opinion questioned Agent Lawlor's truthfulness on several specific issues. First, the Court stated

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[1] A small quantity of drugs, which was in plain view, was also seized.

that "[t]here is nothing in the transcript of the telephonic application for the warrant to support Agent Lawlor's sworn testimony" that the magistrate judge "decided" what to write on the face of the warrant "about the items to be seized or searched for." The application transcript shows that the magistrate judge instructed Lawlor on what to write in virtually every section of the warrant. After Lawlor recounted the facts establishing probable cause, the magistrate stated:

> I'm convinced both of the, the need and exigency for the, ah, search warrant on this oral testimony, that there is probable cause to believe at that residence there may be, ah, evidence of, of the bank robbery in question. So sign the, ah, search warrant and, ah, the date is, ah, January 27, 1997, and, if you would, write that in on your form too and the time we'll use is 8:50 . . .

Although these instructions are not entirely clear, they are reasonably construed as Agent Lawlor recalled them at the hearing, that is, as directing him to write on the warrant "evidence of the crime of bank robbery." This is particularly true since, as noted, Lawlor followed the magistrate's specific directions in completing the other sections of the warrant. Beyond this, since as Lawlor well knew, the transcript of the warrant application was available to the Court, Lawlor would have had nothing to gain (and much to lose) by deliberately misrepresenting his conversation with the magistrate.

Second, the Court conclded (Mem.Op.n.3) that Agent Lawlor "was not credible" in testifying at the hearing, and in the telephonic warrant application, that Dickerson was not under arrest and therefore free to go until after execution of the search. The Court reasoned: "It strains credibility to believe that the FBI would simply release a

person who (1) owns a car used in a bank robbery; (2) admits that he was in the vicinity of the robbery in question at the time it was committed; (3) admits that a passenger in his car engaged in behavior that witnesses attribute to the robber[2]; (4) is subsequently discovered with a large sum of cash; and (5) who agents "believe . . . could destroy evidence" of the robbery."

The information the agents possessed prior to the search provided probable cause for the search and may also have amounted to sufficient cause for Dickerson's arrest; but that falls short of establishing that Agent Lawlor was untruthful in representing that Dickerson was not going to be arrested unless more evidence turned up. Agents commonly delay arresting a suspect for investigative reasons until after they obtain enough evidence to prove guilt beyond a reasonable doubt. In fact, it is not unusual for prosecutors to recommend that practice during investigations. See *United States v. Jones*, 18 F.3d 1145, 1155 (4th Cir. 1994) (recognizing that investigators and prosecutors have discretion to delay arrests even after they have probable cause); Cf. *United States v. Lovasco*, 431 U.S. 783 (1977) (the government is not required to indict as soon as it obtains probable cause, and there may be good reason to delay indicting until more conclusive evidence is obtained).

Here, assuming *arguendo* that the agents had probable cause to arrest Dickerson *before* the search, there is no reason to conclude that Agent Lawlor was untruthful when he testified that the agents did not intend to effect an arrest at that point. The attached affidavits of FBI Agent Wenko and Alexandria Detective Durkin directly corroborate Lawlor. Thus, Agent Wenko avers:

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[2] Dickerson did not make this admission until after the warrant was approved. See Suppression Hearing Tr. 12, 45, 48; Government's Second Supplemental pleading, p.3.

> My understanding on January 27, 1997, was that Dickerson would not be arrested unless he confessed or some evidence implicating him in a bank robbery was found in his apartment. I understand that once I found the bait bill in his apartment, there was enough evidence to arrest Charles Dickerson. In my experience, it is common for agents on my squad to ask a suspect in a violent crime to come to the FBI office to be interviewed and then let that suspect go after the interview. This is true even where we believe that the suspect is responsible for the crime, and even where we may have probable cause for an arrest but not a strong enough case to bring to trial.[3]

Wenko Affd. ¶ 14.

Detective Durkin states:

> After Agent Lawlor was informed about the bait bill found in Dickerson's apartment and after Dickerson made the admissions, he was told he would be charged with bank robbery. Before we learned of the bait bill, we were not going to arrest Dickerson and he would have been allowed to leave the FBI office. As we had told him, and I typically do, I or another officer would have given Dickerson a ride home if he had asked for one.

Durkin Affd. ¶ 13.

Third, the Court concluded that Agent Lawlor was not credible in testifying that Dickerson was given *Miranda* warnings *before* making the incriminating statements in issue; the Court elected to believe Dickerson's contrary

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3 Agent Wenko's affidavit also sets out three situations where suspects in armed bank robberies were interviewed but not arrested. *Id.* ¶ 15. In the instant case, until after the search turned up evidence of bank robbery, the agents did not believe their case against Dickerson was strong enough to bring to trial.

testimony. However, Detective Durkin, who was with Dickerson in the FBI interview room "the entire time," states unequivocally: "I am sure that Dickerson was read his Miranda rights before he made th[e] statements" in issue. Durkin Affd. ¶ 12. Moreover, Durkin notes that Dickerson prepared a written statement in his own hand (attached to Durkin's affidavit) in which he admittedly was "read [his] rights" after he had been with the agents a couple of hours but *before* he made the incriminating statements.[4] We think this is compelling new evidence that strongly favors reconsideration of this issue both to achieve the just result in the case and to avoid the unwarranted tarnishing of Agent Lawlor.

Agent Lawlor, Detective Durkin, and Dickerson's written statement all establish that Dickerson was given his rights prior to making the incriminating statements. The fact that Agent Lawlor's hearing testimony about the precise time Dickerson was advised of his rights ("minutes" after the warrant was authorized) seemed to conflict with the time stated on the advice of rights form—a discrepancy on which the Court heavily relied—does not contradict the direct proof concerning the crucial fact, that is, that Dickerson was given his warnings *before* he made the incriminating statements. At worst, Agent Lawlor was simply mistaken about the time that transpired between getting the warrant (about 8:50 p.m.) and giving Dickerson his rights (9:41 p.m.). Lawlor certainly would have had no motive to lie about that matter since the only relevant issue was not clock-time but sequence, *i.e.*, whether Dickerson was *Mirandized* before his statements, and since (as the Court itself noted) the time between the

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4 Dickerson's written statement indicated that he was given his rights at 7:30 p.m.—a time hours before the warrant was approved. Detective Durkin's affidavit states that Dickerson was simply wrong about the time. Dickerson was given his warnings after the warrant was approved, but *before* his incriminating statements.

warrant approval and the advice of rights waiver was indicated on the face of the documents.

Finally, the Court concluded that Agent Lawlor was not credible in testifying that he "didn't expect one way or the other" whether his colleagues would have their weapons drawn when they knocked on Dickerson's door. With all respect, we do not think the Court is familiar with the practices followed by FBI agents in such circumstances. Agent Lawlor's testimony was consistent with what those *ad hoc* practices are.[5] As FBI Agent Wenko states in his affidavit, "In my experience, agents sometimes draw their weapons and sometimes do not draw their weapons in situations like this." ¶ 4. With respect to the incident in question, Agent Wenko states: "Before knocking on Dickerson's door, we had no discussions about whether to draw our weapons, and I had no expectations that the other agents would or would not have their weapons drawn . . . I took up a station at the rear of the apartment, and I drew my weapon out of my holster, but I kept it down next to the holster, near my hip, pointed at the ground." *Id.*

Beyond this, Agent Lawlor's testimony about his *expectations* about the drawing of weapons was completely immaterial to the suppression issues before the Court. There was no question that the agents were armed and Lawlor did not testify that guns were not actually drawn.[6]

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5 Whether an *ad hoc* approach is prudent or even safe is not the question. Judges or even prosecutors might think different procedures would be wiser. The question here is whether Agent Lawlor's testimony reflects the approach that actually exists, and is therefore more credible than the Court viewed it as being. We note in passing, however, that the issue may not be as clear-cut as it might seem at first blush. Each situation, each suspect and each site is bound to differ in ways that do not lend themselves to a one-size-fits-all "procedure".

6 The Court's Opinion stated that its assessment of witness credibility was partly based on demeanor. In 1996, Agent Lawlor suffered a broken neck playing hockey and is unable to turn his head. This accounts for his seemingly stiff and uneasy posture when testifying.

B. Dickerson's Statements Are Admissible

The Court found that Dickerson was in custody for *Miranda* purposes and that he was not advised of his rights until after he gave the incriminating statements in issue. We agree with the Court's statements of the applicable principles (as set out by the Fourth Circuit in the *Howard*[7] case) governing the custody determination, but disagree that Dickerson's "freedom of movement was restricted as if he had been arrested." The hearing record reflects that Dickerson agreed to accompany the agents to the FBI office and that he was not handcuffed in the car or at the office. The Court's Opinion emphasized that Dickerson "was not told that he was free to go," and that the choice Dickerson confronted was to "either stay in the warmth and light of the FBI field office or to be cast off into the dark and danger of the Washington night." Detective Durkin's affidavit shows this was simply not the case at all. Durkin states: "In the interview room, Dickerson was told that he was not under arrest, *that he was free to go, and he was told that he would be given a ride home.*" ¶ 8 (emphasis added). Agent Wenko's affidavit likewise states: "It is my practice, and that of others on my squad, including SA Lawlor, when finished with an interview, to give the suspect a ride back to his residence, or call him a cab if he prefers, or allow him to wait for someone to pick him up." ¶ 14.

But, even if the Court adheres to its view that Dickerson was in custody for *Miranda* purposes, the Court should reconsider its holding that he was not given his rights until after he made the incriminating statements in issue.

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7 *United States v. Howard*, 1997 WL 318068 (4th Cir. June 13, 1997).

As set out earlier in our discussion of Agent Lawlor's credibility, Lawlor's testimony, Detective Durkin's affidavit, and Dickerson's own written statement show that Dickerson was advised of his *Miranda* rights *before* he made the statements.

At all events, even if *Miranda* warnings were required and not timely given, suppression cannot automatically be imposed. To the contrary, Congress has declared that where, as here, the statement was voluntary, it is to be admitted. To supersede the prophylactic rules promulgated in the *Miranda* decision [8] and to restore the traditional vouluntariness standard for the admission of statements made during custodial interrogation, Congress enacted 18 U.S.C. 3501. Section 3501 provides that "in any criminal prosecution brought by the United States . . . a confession *shall be admissible* in evidence if it is voluntarily given" (emphasis added). Section 3501(b) directs the trial court to consider "all the circumstances surrounding the giving of the confession" in deciding on its admission, including a number of enumerated factors, such as the defendant's receipt or awareness of the type of information conveyed in *Miranda* warnings. These factors, however, are only to be considered as evidence "in determining the issue of voluntariness," and the statute states expressly that "[t]he presence or absence of any of the . . . factors . . . need not be conclusive on the issue of voluntariness of the confession." 18 U.S.C. 3501(b). As the legislative history of Section 3501 explains, under subsection (b) "the trial judge must take into consideration all the surrounding circumstances in determining the issue of voluntariness, including specifically numerated factors which historically

[8] See *Michigan v. Tucker*, 417 U.S. 433, 443-44, 446 (1974) (describing *Miranda* rules as not constitutionally required but only "prophylactic standards"); *Withrow v. Williams*, 113 S. Ct. 1745, 1752-53 (1993) (collecting numerous cases describing *Miranda* rights as "prophylactic in nature").

enter into such a determination. Whether or not the arrested person was informed of or knew his rights before questioning is but one of the factors." S. Rep. No. 1097, 90th Cong., 2d Sess. (1968), *reprinted in* 1968 U.S.C.C.A.N. 2112, 2137. In other words, the significance of the factors enumerated in subsection (b) under the statute is simply the same as their significance in traditional voluntariness case law. *Cf., e.g., Crooker v. California*, 357 U.S. 433, 438 (1958).

Although Dickerson's suppression motion pleadings alluded to his Fifth Amendment rights, he relied principally on the argument that his statements should be suppressed because they allegedly were not preceded by *Miranda* warnings. He argued that the facts showed custodial interrogation, but did not even contend that his statements were coerced. Indeed, any effort along those lines would fail. See, *e.g., United States v. Braxton*, 112 F.3d 777, 784 (4th Cir. 1997) (*en banc*); *United States v. Elie*, 111 F. 3d 1135, 1143 (4th Cir. 1997). There is absolutely nothing in the record suggesting that Dickerson's "will was overborne," *Elie, id.* Moreover, Detective Durkin states that Dickerson was told that he was free to go and would be given a ride home; that, during the approximately four hours between the time he left his apartment and admitted he was with Jimmy Rochester in Alexandria on the day of the robbery, he was offered soda and was allowed to use the bathroom; that "Dickerson was never touched or threatened or promised anything to induce him to talk"; and that he appeared to "understand what was going on and to communicate effectively." Durkin Affd. ¶s 8, 13-15.

As the Fourth Circuit noted in *Elie*: "Because a defendant must demonstrate that the police activity used to elicit the incriminating statement was coercive, it is not surprising . . . that 'very few incriminating statements,

custodial or otherwise, are held to be involuntary.' " (citation omitted). Since this case is no exception, Dickerson's statements are admissible under Section 3501.

C. The Fruits of the Warrant-Authorized Search Are Admissible

The Court suppressed the fruits of the search of Dickerson's apartment ruling that the warrant was insufficiently particular in describing the items to be seized, and that the good faith exception to the exclusionary rule was inapplicable because "[t]he officers executing the warrant acted in bad faith." We believe the warrant was sufficiently particular, although by no great margin. *See United States v. Fawole*, 785 F. 2d 1141, 1144 (4th Cir. 1986) ("The warrant confines the executing officers' discretion by allowing them to seize only evidence of a particular crime. Consequently, we find that the warrant describes the items to be seized with sufficient particularity to satisfy the Fourth Amendment."); *United States v. Anthony*, No. 92-5258 (4th Cir. August 8, 1993) (unpublished) 1993 WL 321595. In addition, on this issue, we rely on our original pleadings (particularly Government's Second Supplemental pleading, pp. 14-17). We believe the cases we cited are consistent with the principle that

> [t]he test for the necessary particularity is a pragmatic one. The degree of specificity required may necessarily vary according to the circumstances and type of items involved . . . There is a practical margin of flexibility permitted by the constitutional requirement for particularity in the description of the items to be seized.

United States v. Torch, 609 F. 2d 1088, 1090 (4th Cir.), cert. denied, 446 U.S. 957 (1979) (citations omitted).

As a practical matter, the instant warrant did not authorize an improper general search because "evidence of the crime of bank robbery" generally includes a distinct, readily identifiable class of items, as in *Fawole*. As reflected in Agent Wenko's affidavit, experienced FBI agents investigating bank robbery know exactly what to search for: "guns, money, bait bills, dye-stained money and dye-stained objects, burned money, clothing, shoes, disguises, carrying bags, gloves." Wenko Affd. ¶ 8.

This also distinguishes a case like this from those involving investigations of more complex, general, or document related offenses. For example, as Professor LaFave points out, "[s]earch warrants for documents are generally deserving of somewhat closer scrutiny with respect to the particularity requirement because of the potential they carry for a very serious intrusion into personal privacy." W. LaFave, *Search and Seizure*, § 4.6(d) p. 569 (3d ed. 1996).

Even if the Court adheres to its view that the warrant was not sufficiently particular, we believe it should reconsider its holding that the warrant was so facially deficient as to preclude reasonable reliance on it. As the Fourth Circuit recently explained, "[a] warrant that fails to particularize the place to be searched or the items to be seized is so facially deficient that it precludes reasonable reliance *only* when '[o]fficers poised to conduct a search [would] be able to ascertain that [it] fails to offer sufficiently detailed instruction and instead leaves them guessing as to their task,' " *United States v. Ruhe*, 1997 WL 269339 (4th Cir. May 22, 1997) (unpublished) (emphasis added). *Ruhe* suggests that the standard for assessing the objective reasonableness of reliance on the warrant is whether it gave the searching officers "any guidance whatsoever as to the subject of the search," tak-

ing care to consider as well "the knowledge of the searching officers."

Although the warrant certainly could have been more particular, one could not say that it failed to provide "any guidance whatsoever as to the subject of the search." The warrant authorized a search for "evidence of the crime of bank robbery"—a distinct category of evidence such as guns, bait money, disguises and the like, that would easily be known to and identifiable by law enforcement officers.

The *Ruhe* factor relating to "the knowledge of the searching officers" strongly supports our position that the search was undertaken in good faith. Thus, Agent Wenko, the lead agent in the search, states in his affidavit:

> 3. After the robbery of the First Virginia Bank, 300 South Washington Street, Alexandria, Virginia, I was familiar with the specifics of that robbery, namely, that a semi-automatic handgun was used and the amount of loss in the robbery.
>
> 7. At approximately 9:00 to 9:15 p.m., I received a call from SA Lawlor who informed me that he had obtained a telephonic search warrant for Dickerson's apartment from U.S. Magistrate Judge Kenkel. SA Lawlor told me that the warrant was signed.
>
> 8. I knew from previous discussions with Agent Lawlor that we were applying for a search warrant to seize evidence of the robbery of the First Virginia Bank on January 24, 1997. More important, I have been investigating bank robberies for about seven years, and I know what evidence of bank robberies we search for: guns, money, bait bills, dye-stained money and dye-stained objects, burned money, clothing, shoes, disguises, carrying bags, gloves. These were the objects I and the other searching agents were looking for in Dickerson's apartment. I knew precisely what to search for and did not feel that I needed any other guidance.
>
> 9. I relied in good faith on the warrant signed by Judge Kenkel in searching Charles Dickerson's apartment and seizing evidence from that apartment.

This shows that Agent Wenko knew the purpose of the search, the specifics of the First Virginia Bank robbery—including that a semi-automatic handgun was used and the amount of the loss—and knew from experience the particular items that typically constitute evidence of bank robbery.

We have discussed, here and in our original pleading, the cases setting out a standard for the particularity requirement. The court also discussed some of these cases, as did defense counsel. In truth, the line dividing language found sufficiently particular from language found too general is a fine one indeed. The cases falling on one side are so similar to those falling on the other that only the most exacting eye could expect routinely to distinguish the one from the other. But it is precisely that fact that tells the tale here. In order to overcome the good faith exception, the defense must show that the warrant was "so facially deficient" that *no* reasonable officer could believe it to be valid. *United States v. Hyppolite*, 65 F. 3d 1151, 1156 (4th Cir. 1995) (citing *United States v. Leon*, 468 U.S. 897, 923 (1984)). While there may well be room to doubt the specificity of this warrant, that exacting test is one the defense has failed to meet. Accordingly, the good faith exception should apply, and the Court should reconsider its suppression order.

CONCLUSION

Dickerson's statements and the fruits of the search of his apartment should be held admissible. In addition, the Court should strike from any Opinion in this case accusations that Agent Lawlor gave untruthful testimony. Alternatively, we ask for re-opening of the suppression hearing.

Respectfully submitted,

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/s/ Robert A. Spencer
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AFFIDAVIT

I, Thomas O. Durkin, being duly sworn, depose and say:

1. I am a Detective with the Alexandria Police Department. I have been a Detective for ten years and I have been employed by the Alexandria Police Department for 20 years.

2. I was involved in the investigation of Charles Dickerson in the robbery of the First Virginia Bank, 300 South Washington Street, Alexandria, Virginia, on January 24, 1997.

3. On January 27, 1997, I was present at Dickerson's apartment at 8313 Garland Avenue, Takoma Park, Maryland. Approximately 10 law enforcement officers were present when we knocked on Dickerson's door to ask him to come to the FBI field office to answer questions about the January 24, 1997, bank robbery.

4. Although Dickerson was a suspect in the armed robbery of the First Virginia Bank, before we knocked on Dickerson's door, we did not discuss whether to draw our weapons. I was not directly in front of the door, and I did not draw my weapon. Often in situations where I go to interview a suspect in a violent crime, I will have my weapon drawn so that it is ready, but hidden behind my leg or back so that it is not visible and intimidating to the suspect. I do not recall whether the other law enforcement officers present on January 27, 1997, had their weapons drawn.

5. Agents explained to Charles Dickerson that we wanted to talk with him about a bank robbery in Alexandria on January 24, 1997, and that, although he was not under arrest, we wanted him to come to the FBI

field office to answer questions. We told him that he was free to go. He agreed to come to the FBI office.

6. Agent Chris Lawlor, I, and perhaps one other agent followed Dickerson back to his bedroom. The other agents stayed in the entryway. In his bedroom, Dickerson picked up his coat and under the coat we saw a pile of cash, including $100 bills. Dickerson said it was his money and he put it in his pocket to take it with him.

7. Charles Dickerson rode with SA Lawlor and SA Armin Showalter to the FBI field office. I rode in a separate car. Once at the FBI office, I was put in an interview room with Dickerson, and after that I was never away from him that night. Dickerson arrived at the FBI field office at approximately 6:00 p.m.

8. In the interview room, Dickerson was told that he was not under arrest, that he was free to go, and he was told that he would be given a ride home.

9. Dickerson told me and SA Lawlor that he was in Alexandria on January 24, 1997, and he drew a map showing where he was. The map showed the area around the corner from the First American Bank that was robbed. Dickerson said, however, that he was there looking at a restaurant, that he ran into a friend named Terrance, and would admit to nothing else.

10. At some point, Agent Lawlor left the interview room, leaving me alone with Dickerson. Dickerson continued to talk with me about such subjects as his career as a hair stylist. After a time, and I am not sure how long, SA Lawlor returned and told Dickerson that "we are going to search your apartment." I do not recall Agent Lawlor mentioning a search warrant. Again, SA Lawlor was gone from the interview room for some time. Agent Lawlor then returned to the interview room, and

SA Lawlor and I advised Dickerson of his Miranda rights. Dickerson signed a written waiver of his Miranda rights. Still, however, he stuck to his earlier story. Then, SA Lawlor was paged and left the room to make a phone call.

11. During this time when I was alone in the interview room with Charles Dickerson, I asked him to write down what he did that day, and I gave him a white sheet of paper and a pen. That piece of paper is attached to this affidavit as Exhibit A. Dickerson wrote that he was read his rights at "7:30 But I was here at 5:30." I am sure that Dickerson wrote that after he was advised of his Miranda rights. When he wrote that, I specifically recall thinking that Dickerson had no idea what time it was.

12. Shortly, Agent Lawlor returned and told Dickerson that they had found a bait bill from a bank robbery in his apartment. At that point, Dickerson then told us that he had been with Jimmy in Alexandria on January 24, 1997, that he knew Jimmy was a bank robber, and that he had washed dye-stained money for Jimmy in the past. I am sure that Dickerson was read his Miranda rights before he made these statements.

13. After Agent Lawlor was informed about the bait bill found in Dickerson's apartment and after Dickerson made the admissions, he was told he would be charged with bank robbery. Before we learned of the bait bill, we were not going to arrest Dickerson and he would have been allowed to leave the FBI office. As we had told him, and as I typically do, I and another officer would have given Dickerson a ride home if he had asked for one.

14. From the time Dickerson left his apartment to the time he admitted he was with Jimmy Rochester in Alex-

andria on January 24, 1997, approximately four hours passed. During the time Dickerson was in the interview room at the FBI offices, he was offered soda and he was allowed to, and did, use the bathroom.

15. Throughout the evening, Dickerson was never touched or threatened or promised anything to induce him to talk. He appeared to me to understand what was going on and to communicate effectively with us.

/s/ Thomas O. Durkin
THOMAS O. DURKIN
Detective
Alexandria Police Department

[Notary Omitted in Printing]

BEST AVAILABLE COPY

I was read my rights
at 7.30 PM I was done at
5:30 I talked to the two ~~Detectives~~
Detective Thomas Durkin and Agent Lawlor
for two and a half hours and then
was asked ~~[illegible]~~ to take a polygraph test
I declined because after two hours I had
knowledge of the bank robbery.
I told them I know nothing of the bank
robbery that happened friday.
Before today I didn't have any knowledge of the
bank robbery.

AFFIDAVIT

I, Lawrence Kevin Wenko, being duly sworn, depose and say:

1. I am a Special Agent of the Federal Bureau of Investigation ("FBI") and I have been so employed since September 1988. I am currently assigned to a squad that investigates bank robberies.

2. I was involved in the investigation of Charles Dickerson regarding the robbery of the First Virginia Bank, 300 South Washington Street, Alexandria, Virginia, on January 24, 1997. I was the lead agent in the search warrant of Dickerson's apartment at 8313 Garland Avenue, Apartment 3, Takoma Park, Maryland, on January 27, 1997.

3. After the robbery of the First Virginia Bank, 300 South Washington Street, Alexandria, Virginia, I was familiar with the specifics of that robbery, namely, that a semi-automatic handgun was used and the amount of the loss in the robbery.

4. On January 27, 1997, in the late afternoon or early evening, I was present with other agents when we knocked on Dickerson's apartment door to talk with him. Approximately ten agents were in the area, but not all agents went to the door of the apartment. I, and other agents, took up stations around the perimeter of the apartment. We suspected that Dickerson was involved in the armed bank robbery that occurred on January 24, 1997, because his car had been seen leaving the area of the robbery. Our plan was to ask Dickerson to come voluntarily to the FBI field office to answer questions; we were not going to arrest him unless he made incriminating statements. Before knocking on Dickerson's door, we had no discussions about whether to draw our weapons, and I had no expectations that the other agents would or

would not have their weapons drawn. In my experience, agents sometimes draw their weapons and sometimes do not draw their weapons in situations like this. I took up a station at the rear of the apartment, and I drew my weapon out of my holster, but I kept it down next to the holster, near by hip, pointed at the ground.

5. Charles Dickerson left his apartment voluntarily and was driven to the FBI field office by SA Christopher Lawlor and SA Armin Showalter. Charles Dickerson was told that he was not under arrest.

6. After Charles Dickerson left his apartment, I and three other agents waited outside Dickerson's apartment in FBI cars. We watched Dickerson's apartment to make sure that no one went in or out of the apartment. I knew that SA Lawlor was going to talk with Dickerson and was going to try to obtain a search warrant.

7. At approximately 9:00 to 9:15 p.m., I received a call from SA Lawlor who informed me that he had obtained a telephonic search warrant for Dickerson's apartment from U.S. Magistrate Judge Kenkel. SA Lawlor told me that the warrant was signed.

8. I knew from previous discussions with Agent Lawlor that we were applying for a search warrant to seize evidence of the robbery of the First Virginia Bank on January 24, 1997. More important, I have been investigating bank robberies for about seven years, and I know what evidence of bank robberies we search for: guns, money, bait bills, dye-stained money and dye-stained objects, burned money, clothing, shoes, disguises, carrying bags, gloves. These were the objects I and the other searching agents were looking for in Dickerson's apartment on January 27, 1997. I knew precisely what to search for and did not feel that I needed any other guidance.

9. I relied in good faith on the warrant signed by Judge Kenkel in searching Charles Dickerson's apartment and seizing evidence from that apartment.

10. At 9:23 p.m., I photographed the front door of Dickerson's apartment, and at 9:25 p.m. I and other agents entered the apartment. These times are noted on the FD-302 for that evening. The search ended at 12:05 a.m. I wrote the inventory for the search that evening, and that inventory is attached to this affidavit at exhibit A.

11. Upon entering Dickerson's apartment, I went to the rear room, his bedroom. In a low dresser drawer, I found a burned $20 bill, which from my experience appeared to have been burned by an explosive dye pack. I called on my radio to the FBI radio room and asked them to run the serial number from the $20 bill through the NCIC to see whether the bill was a bait bill. In several minutes, I received a radio call that the $20 bill was listed as a bait bill given in a Maryland bank robbery. Then, approximately 30 to 45 minutes after I entered Dickerson's apartment, I called SA Showalter at the field office and told him that we had recovered a bait bill from a Maryland bank robbery. I called Agent Showalter to provide him evidence on which he could arrest Charles Dickerson. That is the only call I made to the FBI field office to report on the items found in the apartment, and, as far as I know, no other agent in Dickerson's apartment called the FBI field office.

12. Soon after talking to SA Showalter, I found the loaded silver, semi-automatic .45 caliber handgun in Dickerson's bed room [sic] closet. It had been put in a pile of clothing just inside the closet door.

13. During the search, we found and seized the items set forth on my inventory. Guns, ammunition, clothing, money, masks, and gloves were seized as evidence of

bank robberies. I seized the letters, photographs, address book, and phone bill as evidence of who Dickerson's associates were. The drugs and drug paraphernalia are contraband that I seized because they were in my plain view during the search. The mesh bag I seized appeared to me to be stained with dye-pack dye.

14. My understanding on January 27, 1997, was that Dickerson would not be arrested unless he confessed or some evidence implicating him in a bank robbery was found in his apartment. I understand that once I found the bait bill in his apartment, there was enough evidence to arrest Charles Dickerson. In my experience, it is common for agents on my squad to ask a suspect in a violent crime to come to the FBI office to be interviewed and then let that suspect go after the interview. This is true even where we believe that the suspect is responsible for the crime, and even where we may have probable cause for an arrest but not a strong enough case to bring to trial. For example, I recently interviewed a suspect in an armed robbery of an armored car. He gave not enough inculpatory statements during the interview for me to arrest him, and so I let him go. It is my practice, and that of others on my squad, including SA Lawlor, when finished with such an interview, to give the suspect a ride back to his residence, or call him a cab if he prefers, or allow him to wait for someone to pick him up.

15. The following are examples of cases where I was involved in investigations where my squad interviewed a suspect in an armed bank robberies [sic] and then did not arrest the suspect and let him go:

a. In 1995, a suspect, who had a felony conviction for bank robbery, approached an FBI informant and asked to rob a bank with him. I and other members of my squad followed the suspect and the informant driving around in the suspect's car and videotaped them casing

several banks in Alexandria, Virginia. When we thought they were about to rob a bank, we intervened and brought the suspect to the FBI field office to interview him. After consulting with the U.S. Attorney's Office, we decided that the case was not strong enough to prove beyond a reasonable doubt. The suspect was allowed to leave the FBI office, and he was given his car back and he drove himself home.

b. In June 1997, in Prince William County, Virginia, I and other agents from my squad stopped a vehicle that was seen leaving the scene of two attempted armed bank robberies. A suspect reported to have been driving the car at the time of the robberies, and a suspect driving the car when I stopped it, were taken to the Prince William County Police Department for questioning. I believed that one of the suspects was the driver during the two attempted bank robberies, but that suspect refused to make any admissions. After consulting with the U.S. Attorney's Office, we let the two suspects go. I and other agents drove the two suspects home.

c. In February 1997, in Alexandria, Virginia, a distinctive vehicle, a black Mazda RX-7, was seen leaving the scene of an armed bank robbery. The vehicle was located in Prince George's County, Maryland, and the registered owner of the car was located there and voluntarily brought back to the FBI field office for questioning. When he was found in Maryland, the owner of the car was carrying a 9 mm handgun. The gun was confiscated. The suspect made no admissions during the interview, and he was later let go because we decided we did not have enough evidence to prove his involvement in the bank robbery beyond a reasonable doubt. Another agent from my squad drove the suspect home to Prince George's County, Maryland. The suspect remains a suspect in that bank robbery.

16. I was present for much of the interaction with Charles Dickerson and the search of his apartment on January 27, 1997. I feel that the interview of Dickerson and the search of his apartment were done by the book. In addition, I have known and worked with SA Christopher Lawlor for years. He is an honest, experienced, and professional agent, and he would not lie in any manner in connection with a case.

/s/ Lawrence Kevin Wenko
LAWRENCE KEVIN WENKO
Special Agent
Federal Bureau of Investigation

[Notary Omitted in Printing]

2000-1-11

FEDERAL BUREAU OF INVESTIGATION
Receipt for Property Received/Returned/Released/Seized

Page 1 of 3

On (date) 01/27/97

Item(s) listed below were:
- ☐ Received From
- ☐ Returned To
- ☐ Released To
- ☑ Seized

Time: _____

(Name) CHARLES DICKERSON.

(Street Address) 8313 GARLAND STREET

(City) TAKOMA PARK, MD

Description of Item(s):

(1) one S&W MODEL 745 S/N DVC0473
(2) one 45 AUTO ROUND from CHAMBER
(3) one 45 CAL MAGAZINE CONTAINING EIGHT ROUNDS.
(4) one TORN five Dollar bill
(5) Three (3) WINCHESTER 38 SPL ROUNDS
(6) One (1) ROUND WINCHESTER 38 SPL ROUND
(7) One (1) PLASTIC BAG Green LEAFY SUBSTANCE
(8) One (1) PAIR gold colored GLASSES FRAME no GLASS.
(9) One (1) VIRGINIA ID CARD CHARLES DICKERSON SSAN 579-98-6292
(10) One (1) OPENED bag LATEX gloves.
(11) One (1) WHITE PAPER BAG CONTAINING One (1) ROUND 357 MAGNUM
(12) One (1) TANITA MODEL 1479 SCALE AND CASE.
(13) One (1) LEATHER LIKE VEST WITH PLASTIC BAG IN left POCKET CONTAINS WHITE SUBSTANCE.
(14) One (1) MONTH CARDIOLOGIST CITATION # 7S74940-1
(15) DISTRICT COURT OF MARYLAND (Mont Co) CASE # 3D0003502 PAPERWORK.
(16) Reciept CASE ADVANCE WILLIAM O. GALERY II

Received by: _____ (Signature) Received from _____ (Signature)

FEDERAL BUREAU OF INVESTIGATION
Receipt for Property Received/Returned/Released/Seized

114

On (date) 01/27/97

Time: _____

item(s) listed below were:
- ☐ Received From
- ☐ Returned To
- ☐ Released To
- ☑ Seized

(Name) CHARLES DICKERSON
(Street Address) 8313 GARLAND STREET
(City) TAKOMA PARK, MD

Description of item(s):

(17) ROCHE BOBOIS RECIEPT.
(18) DISTRICT COURT of MARYLAND Criminal System Inquiry
(19) MONTGOMERY County Detention Center Money Reciept.
(20) One blue colored Fahrenheit zipped bag containing plastic bag with NINE (9) 45 AUTO ROUNDS.
(21) One black vinyl Address book.
(22) Two (2) white dust masks.
(23) Twenty four (24) one Dollar bills
(24) one (1) dye stained $10 s/n B 89668634C
(25) one (1) dye stained $1 s/n E 94987678F
(26) Two (2) dye stained $2 s/n E 54680293A
E 18685869A
(27) one (1) bluish stained $10 s/n D68705312A
(28) one (1) bluish stained $1 s/n E 23397722
(29) Two (2) one Dollar bills
(30) one dye stained / burnt $20 s/n C 592629
(31) one bluish stained $10 s/n A 92079571A
(32) one Washington D.C. Drivers License for WILLARD GALERY
(33) one BLACK KNIT MASK
(34) one CROSSMAN REPEATER s/n 95597642 B.B .177 CAL

Received by _____ SA FBI (Signature)

Received from _____ (Signature)

FEDERAL BUREAU OF INVESTIGATION
Receipt for Property Received/Returned/Released/Seized

On (date) 01/27/97

Time:

item(s) listed below were:
- ☐ Received From
- ☐ Returned To
- ☐ Released To
- ☑ Seized

(Name) CHARLES DICKERSON
(Street Address) 8313 GARLAND Street
(City) TAKOMA PARK, MD

Description of Item(s):

(35) One (1) receipt Dated 1/27/97
(36) One (1) District Court of Maryland for Montgomery County Case # OD0003502I
(37) Two Photographs
(38) Bell Atlantic Bill
(39) Cellular one Bill
(40) Certificate of Title for 82 Chev. VIN 2G1AN69H8C1262951
(41) Certificate of Title 95 Nissan Tk to Rooney Davis
(42) Taj Mahal letter.
(43) One (1) mesh bag
(44) One small Address Book. - Girlfriends Cards
(45) One Business Card.
(46) One (1) set Keys to Chev.

— END —

Received by: Lamar Lee White, SA FBI (WFO) (Signature)

Received from (Signature)

BEST AVAILABLE COPY

[Filed July 28, 1997]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)

[Caption Omitted in Printing]

DEFENDANT'S OPPOSITION TO GOVERNMENT'S MOTION FOR RECONSIDERATION

COMES NOW the Defendant, Charles Dickerson, through counsel, and respectfully submits this Opposition to Government's Motion for Reconsideration.

Motions to reconsider are disfavored by the Court, particularly in cases where the issues in question have been fully briefed and litigated in open court. Absent the presentation of extraordinary circumstances involving matters not within the moving party's control at the time of the original motion, Motions to Reconsider should be summarily denied.

The Government contends this case is unique and worthy of reconsideration because the Court based its ruling, in part, on the lack of credibility it found in an FBI agent's testimony. The Government argues what is "[a]t stake here is not only our ability to bring Dickerson to book for multiple armed robberies, but also quite possibly an agent's career."

The potential effect of the Court's ruling on Agent Lawlor's career is not a matter for judicial consideration. If that question is to be addressed, it will be done internally by the FBI. The question before this Court is

limited to whether Mr. Dickerson's constitutional rights were violated on the night of January 24, 1997. After a full presentation of all relevant evidence and applicable law, the Court took the matter under advisement. After careful consideration, the Court ruled that the [sic] Mr. Dickerson's rights were violated and that suppression of his statement's [sic] to the police and the items discovered during the search of his home was required. The Court supported this decision with a lengthy written opinion clearly stating the facts and the law it relied upon in reaching this decision.

The Government now asks the Court to reverse this decision, and, in support of this request, attempts to supplement the record with affidavits of witnesses and other evidence it elected not to present at the suppression hearing. The Defendant objects to the untimely presentation of this evidence and asks that the Court refuse to admit it as part of the record in this case. This evidence is not newly discovered. All of it was available to the Government at the time of the suppression hearing. The affidavits are from special agents of the FBI who have been involved in this investigation since Mr. Dickerson's arrest. The written statement purportedly made by Mr. Dickerson has been in the custody and control of the Government since the Defendant's arrest, yet it was not provided to the Court or to the Defendant until after the Court issued its ruling on the Defendant's Motion to Suppress.

As will be discussed, even if this new evidence is taken into account, it does not provide the Court with a sufficient basis to reverse its ruling. The Defendant therefore asks that this Honorable Court deny the Government's Motion to Reconsider.

A. ***The Court correctly ruled that Dickerson was in custody and subjected to interrogation prior to being advised of his Miranda rights.***

1. ***The Defendant was in police custody when his statements were obtained.***

In ruling on the Motion to Suppress, the Court held that Mr. Dickerson was in custody when he was taken from his residence. The Court made specific findings of fact in support of this ruling:

> In this case, several armed police officers and federal agents entered Dickerson's home after dark and asked him to accompany them to the station. They then took Dickerson across the state line, on a ten-mile ride through the District of Columbia to the FBI field office near Buzzard's Point, in Southwest D.C. . . . [H]e was not told he was free to go. After the interrogation described above, and without leaving the presence of the officers and agents, he was arrested. . . .
>
> Under these circumstances, Dickerson's "freedom of movement" was as restricted as if he had been arrested. . . . [T]he only circumstance of Dickerson's encounter with the agents that night which would have changed had he been arrested at the outset rather than the end is that he would have been read his rights earlier. To allow law enforcement officers to circumvent *Miranda* by merely delaying their inevitable arrest of a suspect until he or she offers an uncounseled and unwarned confession would ultimately gut the intent of *Miranda* and its progeny.

These conclusions are fully supported by the record before the Court. Even if considered, nothing in the new

affidavits offered by the Government contradicts the chain of events as recited by the Court. Both Det. Durkin and Agent Wenko admit they were armed. Agent Wenko admits he had his weapon drawn. Det. Durkin admits he and perhaps two other agents followed Mr. Dickerson into his bedroom. Det. Durkin does not state that Mr. Dickerson consented to the agents presence in his room. The affidavits confirm that Mr. Dickerson was taken by the officers to the FBI field office in Washington, D.C. It is undisputed that he was formally advised that he was under arrest while at the field office. He never returned voluntarily to his home that night. Thus, no basis has been provided by the Government to warrant reversal of this portion of the Court's ruling.

2. *The Defendant was not properly advised of his Miranda rights.*

Having found Mr. Dickerson to be in custody, the Court then ruled that he was not timely advised of his *Miranda* rights. In reaching this conclusion, the Court relied upon the documents submitted by the Government and the testimony of Mr. Dickerson. The Court rejected the testimony of Special Agent Lawlor because it was rebutted by the Government's own documents. On the other hand, Mr. Dickerson's testimony regarding when he was Mirandized was fully corroborated by the times recorded on the search warrant and the rights waiver form.

Again, nothing in the affidavit of Det. Durkin refutes the Court's conclusion. The affidavit does not explain how or why these documents indicate a one hour gap between when the search warrant was issued and when Mr. Dickerson was finally Mirandized. Only Mr. Dickerson's explanation that he was not Mirandized until after he made all of his statements to the police adequately fulls [sic] in the recorded time gap.

The Government contends that the times supplied by the officers is not relevant, only the sequence of events which they recite is important. This argument fails to account for the fact that Mr. Dickerson provided a different sequence of events. The recorded times therefore are crucial to assess which version is correct. The recorded times corroborate Mr. Dickerson's version and rebut the Government's. Accordingly, the Court's ruling that Mr. Dickerson was not Mirandized before he gave his statements is well grounded in the factual record and does not warrant reconsideration or reversal.

In a last ditch effort to avoid suppression, the Government argues that, even if Mr. Dickerson's statements were obtained through custodial interrogation without *Miranda* warnings, the statements are still admissible under 18 U.S.C. § 3501. *Miranda v. Arizona*, 384 U.S. 436 (1966), and its progeny clearly hold that statements obtained during custodial interrogation are not admissible unless the requisite warnings are given prior to questioning. The Government cites no cases, and defense counsel is unaware of any, which hold that the passage of 18 U.S.C. § 3501 in 1968 overruled the *Miranda* doctrine. 18 U.S.C. § 3501 is a procedural statute which sets forth how and when a trial court is to assess the voluntariness of a confession. The fact that *Miranda* warnings have been given does not, of itself, lead to the conclusion that a confession was voluntary. *Brown v. Illinois*, 422 U.S. 590 (1975); *U.S. v. Johnson*, 495 F.2d 378 (4th Cir. 1974). However, the failure to give *Miranda* warnings prior to custodial interrogation conclusively renders any statements involuntary and inadmissible.

B. *The Court correctly ruled that the warrant was invalidly vague and that the officers executing it acted in bad faith.*

1. *The search warrant did not state with particularity the items to be seized.*

Prior counsel for Mr. Dickerson provided the Court with a lengthy brief examining the law and cases governing the particularity requirement for search warrants. *See* Defendant's Second Supplemental Memorandum in Support of Defendant's Motion to Suppress Statements and Physical Evidence, pp. 7-14. In its Motion to Reconsider, the Government has not provided the Court with any new materials in support of its position that the items to be seized were sufficiently described in the warrant. On this issue, the Government is relying on its original pleadings. For the sake of brevity and judicial economy, the Defendant will do the same.

The Government does offer to the Court the affidavit of Special Agent Wenko who executed the search warrant. In the affidavit, Agent Wenko explains that, given his years of experience and familiarity with this investigation, he knew what items to search for and limited his search accordingly. It is precisely this type of on the scene police discretion that the particularity requirement of the Fourth Amendment prohibits. This same use of discretion was addressed by the Court in *United States v. Buck*:

> While it can safely be said that the police here performed reasonably under the circumstances . . . they clearly did not insure that all the known facts were included in the warrant. The warrant only described the crimes—and gave no limitation whatsoever on the kind of evidence sought. In short, "the warrant left it entirely to the discretion of the officials conducting the search to decide what items were to be seized, and thus was not permissible under the Fourth Amendment.

813 F.2d 588, 589 (2nd Cir. 1987).

Warrants which fail to state as nearly as possible the distinguishing characteristics of the goods to be seized are conclusively invalid. *United States v. Robertson*, 21 F.3d 1030, 1033 (10th Cir. 1994). The fact that the executing officers may have conducted a reasonably limited search will not cure the problem. It is the lack of review and guidance from a neutral magistrate which renders the warrant constitutionally invalid.

2. *The "good-faith" exception to the warrant requirement is not applicable.*

The Fourth Amendment to the Constitution states that "no warrant shall issue but upon probable cause." The Fourth Circuit has stated that "[p]robable cause to search exists when, at the time the magistrate issues the warrant, there are reasonably trustworthy facts which, given the totality of the circumstances, are sufficient to lead a prudent person to believe that the items sought constitute fruits, instrumentalities, or evidence of crime and will be present at the time and place of the search." *United States v. Suarez*, 906 F.2d 977, 984 (4th Cir. 1990). "The ultimate inquiry on a motion to suppress evidence seized pursuant to a warrant is . . . whether, putting aside all tainted allegations, the independent and lawful information stated in the affidavit suffices to show probable cause." *United States v. Giordano*, 416 U.S. 505, 555 (1974) (Powell, J. concurring in part and dissenting in part); *United States v. Hawkins*, 788 F.2d 200, 203 (4th Cir. 1986).

Pursuant to the "good-faith" exception adopted in *United States v. Leon*, 463 U.S. 981 (1983), evidence obtained by law enforcement officers acting in reasonable reliance on a search warrant issued by a detached and neutral magistrate but ultimately found to be unsupported by probable cause can still be used in the prosecution's case-in-chief. Even under this broad exception, however, suppression is still appropriate where the warrant was based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.

The search warrant issued in this case is based on just such an affidavit. The affidavit, a recorded oral statement by Special Agent Lawlor given under oath over the telephone, contains information regarding cash seen in Mr. Dickerson's residence and statements made by Mr. Dickerson while in police custody. This information is unconstitutionally tainted and must be redacted from the affidavit before determining the existence of probable cause. The affidavit does not contain any information supporting the detective's assertion that relevant evidence would be located in the residence. This is especially true once the tainted information is removed.

Similar affidavits have been characterized as "bare-boned" leading to the conclusion that the magistrate abandoned his detached and neutral role and acted merely as a "rubber stamp." Under such circumstances, the good-faith exception of *Leon* cannot be applied and evidence obtained pursuant to the search warrant must be suppressed.

> [T]he good-faith exception to the exclusionary rule should not apply . . . due to the "bare bones" nature of the affidavit, and because the state magistrate could not have acted as other than a "rubber stamp" in approving such an affidavit. *See United States v. Laury*, 985 F.2d 1293, 1311 n. 23 (5th Cir. 1993) (defining "bare bones affidavit" as one that contains "wholly conclusory statements, which lack the facts and circumstances from which a magistrate can independently determine probable cause.")

United States v. Wilhelm, 80 F.3d 116 (4th Cir. 1996) (citing *United States v. Leake*, 998 F.2d 1359, 1367 (6th Cir. 1993) and *United States v. Barrington*, 806 F.2d 529, 532 (5th Cir. 1986)).

Any belief that evidence related to robbery could be found in Mr. Dickerson's residence was based on a mere hunch or suspicion, not known facts articulated in the affidavit. This lack of known facts is precisely why the warrant did not state with particularity what was to be seized during the search: Agent Lawlor did not know what might be found in the residence, therefore, he could not state it with particularity. The law is well settled that substantially more than this is required to support the issuance of a search warrant.

Given the lack of facts in the affidavit upon which to conclude that evidence of robbery could be found in Mr. Dickerson's residence as well as the lack of any statements limiting the scope of the search, any official reliance on the warrant by the executing officers was unreasonable. As in *Wilhelm, supra.*, this is not a case of "objectively reasonable law enforcement activity." The sworn statement by Special Agent Lawlor did not "provide the magistrate with a substantial basis for determining the existence of probable cause." *United States v. Leon*, 468 U.S. at 923. In addition, the magistrate acted as a rubber stamp in finding the evidence sufficient to establish probable cause to search. Officers will not be allowed to claim reliance on a warrant if it is "so facially deficient—i.e.,

in failing to particularize the place to be searched or the things to be seized—that the executing officers cannot reasonably presume it to be valid." *United States v. Owens*, 842 F.2d 462 (4th Cir. 1988), *citing United States v. Leon*, 468 U.S. 897, 923 (1984).

The warrant issued to search Mr. Dickerson's home was overly broad, vague, and unsupported by probable cause. The search executed pursuant to this invalid warrant was unconstitutional because the warrant was so lacking in indicia of probable cause and particularity as to render official belief in its validity unreasonable.

Based on the foregoing, the Defendant requests that this Honorable Court deny the Government's Motion to Reconsider.

Respectfully submitted,

CHARLES THOMAS DICKERSON
By Counsel

/s/ James W. Hundley
JAMES W. HUNDLEY
BRIGLIA & HUNDLEY, P.C.
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Fairfax, Virginia 22030
(703) 385-8005

[Certificate of Service Omitted in Printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

[Caption Omitted in Printing]

The above-entitled matter came on to be heard in the United States District Court, Alexandria, Virginia, commencing at 9 a.m. on August 1, 1997.

BEFORE: The Honorable James C. Cacheris, Presiding Chief Judge, United States District Court

* * * *

[2] PROCEEDINGS

THE COURT: Let me take Dickerson, Charles Dickerson.

Good morning, Ms. Kahoe. Good morning, Mr. Spencer.

MS. KAHOE: Good morning, Your Honor. Kathleen Kahoe and Rob Spencer for the United States.

MR. HUNDLEY: Good morning, Your Honor. Jim Hundley for Mr. Dickerson.

THE COURT: Let the record note he's present in person.

Comes on two motions for reconsideration, plus a motion in limine. I'll go ahead and hear the government's motion for reconsideration, they filed first.

MS. KAHOE: Your Honor, I don't know if the Court wants to hear us reiterate what we have filed already.

THE COURT: I realy [sic] don't need a lot of reiteration. The question is, why didn't you put this evidence on on the first time?

MS. KAHOE: I think, Your Honor, there are two reasons. In the first instance, the defendant's motions, this was the defendant's second round of motions in this case because of the replacement of the attorney. His motions were filed, one was filed three days before the hearing, and one was filed two days before the hearing. So [3] there was really very little time to prepare even one agent much less a number of agents, in addition to which the government rarely puts on a number of agents at a motion to suppress.

In this case we had no reason to believe that Agent Lawler's testimony would not be sufficient. Hearsay is often submitted at these hearings, and we usually don't put on a number of agents so that it won't be a protracted procedure and it won't be a mini-trial in effect and put on the government's whole case.

Agent Lawler has worked with the attorneys in our office for years, and he is one of the better respected agents.

THE COURT: Let me ask you this as well. Some comment was made about his neck which I had no notice of his neck problem that he apparently broke. Don't agents take physicals every year?

MS. KAHOE: Oh, yes.

THE COURT: And he is not under any disability.

MS. KAHOE: No; he just can't move his head. So his head is sort of canted down, can't move.

THE COURT: I didn't notice anything unusual. I made no decision on the basis that he couldn't move his neck, or what have you. I mean, the decision wasn't based on that.

[4] MS. KAHOE: There are a couple of comments among the footnotes about the agent's demeanor, and we were concerned that that might have influenced the Court.

THE COURT: That was not a reason for it, but, okay, I understand.

MS. KAHOE: We would ask the Court to consider these additional affidavits of the agents who could have been put on. We can put them on again live.

THE COURT: In other words, you're telling me this was a short time span that you had to get it ready and that's what happened.

MS. KAHOE: Yes, sir.

THE COURT: I suspect it's one of these deals where they threw the file at Mr. Spencer at 4 o'clock on the day before.

MS. KAHOE: And, in addition, Agent Lawler I don't think focused on that span of time between the search warrant and the Miranda.

THE COURT: His time line didn't jibe.

MS. KAHOE: There was 50 minutes approximately. He referred to it as a few minutes which I'm sure after four or five months since this has happened that his testimony occurred, in retrospect to him it probably didn't seem like a very long time. He was very busy, setting up the search and doing things, and I just don't think that he focused on [5] the fact that it was a longer period of time. He didn't obviously look at those documents. He obviously would not lie about that when it's documented like that. So I think that was just an error on his part.

THE COURT: Okay, thank you.

Mr. Hundley, I will hear your opposition to theirs and the affirmative of your motion to reconsider, hear your opposition to the government's and then your affirmative motion.

MR. HUNDLEY: My motion to reconsider—

THE COURT: Yes, sir.

MR. HUNDLEY: The Court denied, yes, sir.

Your Honor, I believe, I certainly hope I stated it fairly clearly in my opposition to their motion our basis for opposing their motion to reconsider. I would in the first instance ask the Court to not consider the new evidence that they have submitted. They had ample opportunity to present that at the prior hearing and for whatever reason—

THE COURT: They are telling us in essence they didn't have, it was one of these deals where they threw a file at an assistant late one afternoon the day before the hearing, that's what they are telling me, which they did a good job in the case.

Okay, go ahead.

[6] MR. HUNDLEY: I guess they're responsible for the innerworkings of their office, the government's in totality, not Mr. Spencer in and of himself, but he represents the government, he is an agent of the government. They have to do a better job of getting the files to their assistant in time to adequately prepare.

There was a full, transcribed hearing before this Court upon which the Court based its decision. I don't believe that at this time it's appropriate to—

THE COURT: Let me hear the affirmative of your client's motion.

MR. HUNDLEY: Yes, Your Honor.

Essentially, I raised the same arguments in my motion to reconsider that I raise in the defendant's I guess you call second motion to suppress. The Court declines to suppress the evidence seized from the automobile—

THE COURT: Yes, sir.

MR. HUNDLEY: —finding that the statements of James Rochester as well as the witness itself was sufficient. I would submit, Your Honor, and ask the Court to apply the fruit of the poisonous tree doctrine to that portion of

the probable cause, Mr. Rochester's statements regarding the fact that evidence of bank robbery could be found in the car because the government never would have found Mr. Rochester to obtain those statements and to obtain [7] that probable cause but for their unconstitutional treatment of Mr. Dickerson.

It's my position, one, and as the Court has found, he was not properly Mirandized. I know the Fourth Circuit just recently in the United States versus Elie came out with really a case of first impression in how that they were not going to apply the fruit of the poisonous tree doctrine to pure and simple, I guess you could characterize them, Miranda violations, but they didn't say that the fruit of the poisonous tree doctrine did not apply to Constitutional violations.

So, one, let me say for the record I would ask the Court, I am not waiving my argument the fruit of the poisonous tree doctrine should apply simply because of the Miranda violation, but I think I have to acknowledge that U.S. versus Elie is binding precedent on this Court, but I'm not waiving that argument.

But I would argue in the alternative that when Mr. Dickerson was arrested, that was an unconstitutional arrest because there was no probable cause to support it. The Court ruled in its memorandum opinion that he was basically under arrest at the time that the armed agents entered his house and took him down to the FBI field office in Southwest Washington, D.C.

Police officers can of course arrest somebody [8] without a warrant for a felony if they have probable cause to believe, one, that a felony has been committed, which I don't dispute in this case but, two, what is a dispute in this case, that it was the defendant who committed it. And at the time of this arrest, the police had no evidence linking Mr. Dickerson or identifying Mr. Dickerson as

being involved in these bank robberies, the bank robbery in Alexandria in specific.

THE COURT: I understand your argument.

MR. HUNDLEY: Okay. So, based on that, just in conclusion, they never would have gotten to James Rochester but for the unlawful arrest which led to Mr. Dickerson's statement which ultimately led to James Rochester.

THE COURT: Ms. Kahoe, hear your rebuttal as well as your answer in response to that, go ahead.

MS. KAHOE: Yes, sir.

Clearly this Court found that there was probable cause for that arrest. The agents may not have thought so, but this Court found that there was, so there was no illegal arrest in the opinion of this Court.

Even if there had not been probable cause and even if that arrest was not legal, we would have found Mr. Rochester. There was a warrant outstanding for him from Atlanta, and he had been arrested here in Maryland and his fingerprints were on file. And those two things would have [9] been matched up eventually.

So there would have been an inevitable discovery. In addition to which the attenuation doctrine would allow us to use his testimony. He in fact has not testified yet. So quite some time has past between the statements made by Mr. Dickerson and Mr. Rochester's anticipated testimony, which may be in August, may be later than that. The search of the car took two months after this. So the attenuation doctrine would apply to that.

For those reasons, I think most importantly, the reason that the arrest is found to be legal, because there was probable cause for it, but for those other reasons, also Mr. Dickerson's statements for that purpose, the derivative evidence should be admissible: in other words, a search of the car and Mr. Rochester's identity should not be suppressed.

THE COURT: I'm going to take both motions to reconsider under advisement. I will file a written opinion, let you know early next week.

Take the motion in limine, you have a motion in limine.

MR. HUNDLEY: I do, Your Honor.

Your Honor, in my motion I listed I believe there are six instances of what the government has characterized as 404(b) other crimes evidence. They have actually, in [10] their letter, I think they listed in addition to that, but I'm not challenging those.

I am challenging these. I would simply submit that this evidence is, one, not admissible for any of the stated purposes of 404(b) which I'm sure the Court is very familiar with.

THE COURT: Yes, sir.

MR. HUNDLEY: It's simply evidence that's being offered to show that Mr. Dickerson is a person of a character prone to commit the charges for which he has been indicted. This is not evidence of other bank robberies. This is not evidence where a similar modus operandi is at issue.

The government in their rebuttal attempts to argue that it shows evidence of knowledge. Your Honor, to argue it shows knowledge, I think what they are really saying what it shows is that he is somebody who commits crimes; and, therefore, since we know he committed these crimes, he must have also committed the crimes in question. I think that's really just a roundabout way of saying he's got bad character.

THE COURT: His defense is going to be he didn't know a crime was being committed at the time, this, what's the gentleman's name, Rochester, the other guy that was involved? You don't have to answer. If you want to save it [11] for trial, you may.

Mr. Rochester was the guy, right, Mr. Rochester, he supposedly committed these other crimes with?

MR. HUNDLEY: Correct. I guess our defense may well be that, one, he didn't know that Mr. Rochester was committing these crimes, he didn't help Mr. Rochester commit these crimes, and, two, Mr. Rochester is saying that Mr. Dickerson helped him commit these crimes to save his own neck.

THE COURT: Okay, all right, I understand your argument.

Okay, Ms. Kahoe?

MS. KAHOE: Yes, Your Honor, that is exactly our point in this memo, that that probably will be the defense, that he was there but he didn't know what was going on, and these other instances where these people—

THE COURT: Show that he knew what was going on.

MS. KAHOE: Sure, it's intent, it is knowledge, it is modus operandi in large part. But these guns were obtained, crimes were committed at gunpoint. These are very similar crimes, they do go to knowledge, intent, absence of mistake which is something we think he is going to put forth.

THE COURT: Okay, anything else, Mr. Hundley?

MR. HUNDLEY: Your Honor, just in rebuttal to the [12] government's claim that somehow the attenuation doctrine or the inevitable discovery doctrine might apply in this case, I would just point out, one, it's the government's burden to show that by a preponderance of the evidence that those exceptions apply, and I don't think on this record they have done that; and, two, even accepting what they have cited in their pleading, the attenuation cases that they cite involve witnesses who were not involved in the crime itself.

This involves a co-conspirator who is testifying against Mr. Dickerson pursuant to a plea agreement, so I don't think you can say his testimony is so attenuated because it's voluntary. There's clearly questions about his voluntariness, and the inevitable discovery doctrine, the fact that there were warrants outstanding or that his fingerprints were on file, those warrants have been outstanding since September of 1996.

THE COURT: I understand.

As I have indicated, I'm taking the motions to reconsider under advisement.

Now I'm going to rule on the motion in limine, and I'll rule on this orally.

The matter is before the Court on Defendant Charles Thomas Dickerson's Motion in limine. For reasons set forth below, I'm going to grant in part and deny in part.

The facts upon which the case is based are set [13] forth in the Court's several previous memorandum opinions. Dickerson now moves to prevent admission into evidence several alleged crimes in which Dickerson was involved, including an armed robbery, a carjacking, a truck hijacking, an attempted murder, an attempted kidnapping, and drug dealing.

Under Federal Rule of Evidence 404(b), evidence of prior bad acts is inadmissible to show the character of the defendant, but may be introduced to show, *inter alia*, knowledge or absence of mistake. Evidence that is admissible under 404(b) may be excluded if the probative value is substantially outweighed by its prejudicial nature or the danger that it will confuse the jury or waste time. Federal Rule of Evidence 403.

In this case, the government hypothesizes that the defendant may claim that he drove James Rochester to Alexandria on the day of the robbery, but had no idea that Rochester would rob a bank, and now defense counsel has indicated that will be a defense in this case.

If that is how the case unfolds at trial, the government may certainly introduce evidence tending to show that Dickerson knew of Rochester's intent. Accordingly, evidence of the armed robbery would be admissible. How-

ever, evidence of the other is only negligibly probative of any of the other issues listed in 404(b). Moreover, evidence of [14] these crimes would be extremely prejudicial, and such prejudice would substantially outweigh their *de minimus* probativity.

Because evidence that Dickerson has participated in a carjacking, an attempted kidnapping, an attempted murder, a hijacking, and drug dealing fail the tests set forth in both Rule 404(b) and 403, such evidence will not be admissible in the government's case in chief. Evidence that Dickerson has participated in an armed robbery with Rochester may be admitted to show knowledge or absence of mistake.

Thank you. I will let you know as soon as I can on the other issue.

(At 9:35 a.m., the hearing in the above-entitled matter was concluded.)

[Filed Sep. 2, 1997]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

[Caption Omitted in Printing]

NOTICE OF APPEAL

Notice is hereby given that, pursuant to 18 U.S.C. § 3731, the United States appeals to the United States Court of Appeals for the Fourth Circuit from this Court's order entered on August 4, 1997, denying the government's motion for reconsideration, and from the related order of July 1, 1997, suppressing physical evidence and statements.[1]

Respectfully submitted,

HELEN F. FAHEY
United States Attorney

By: /s/ Robert A. Spencer
ROBERT A. SPENCER
Assistant United States Attorney

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[1] The government's timely motion for reconsideration on July 15, 1997 tolled the 30-day period within which to note an appeal from the order of July 1, 1997. *United States v. Ibarra*, 502 U.S. 1 (1991).

CERTIFICATE PURSUANT TO 18 U.S.C. § 3731

I certify that this appeal is not taken for purposes of delay and that the evidence suppressed by the district court constitutes substantial proof of facts material in this proceeding and at Defendant Dickerson's trial.

HELEN F. FAHEY
United States Attorney

By: /s/ Robert A. Spencer
ROBERT A. SPENCER
Assistant United States Attorney